THE NATIONAL LABOR RELATIONS BOARD

THE WANG THEATRE, INC., Employer,)	
and)	Case No. 01-RC-166997
BOSTON MUSICIANS' ASSOCIATION,)	
LOCAL 9-535, AFM, AFL-CIO,)	
Petitioner)	

WTI'S REQUEST FOR REVIEW OF THE ACTING REGIONAL DIRECTOR'S <u>DECISION AND DIRECTION OF ELECTION</u>

Wang Theatre, Inc. ("WTI"), pursuant to Section 102.67 of the Board's Rules and Regulations, requests review of the Decision and Direction of Election of the Acting Regional Director of Region 1 on January 28, 2016, ("DDE"), attached at Tab 1.

The Board should reverse the Acting Regional Director and dismiss the petition. There is no appropriate unit of musicians employed by this single employer, WTI, because: (1) various independent producers are the primary employer of the putative bargaining unit; (2) there has been no work in the putative unit in over a year; and (3) there are no eligible voters, under any eligibility standard that has ever been adopted by the Board.

Factual Background

The Boston Musicians' Association, Local 9-535, AFM ("BMA"), on January 5, 2016, petitioned for an election among "musicians" whose "employer" is the Wang Theatre, Inc. The is petition attached at Tab 2. On January 12, WTI filed its Statement of Position, attached at Tab 3. A hearing was held on January 13, the transcript of which is attached at Tab 4. There were two witnesses: Michael Szczepkowski, Vice President & General Manager of the Citi Performing Arts Center; and Mark Pinto, Secretary-Treasurer of the BMA. WTI entered eight exhibits, marked as Exhibits A through H and attached at Tab 5. BMA entered two exhibits, marked as Exhibits 1 and 2 and attached at Tab 6. The parties filed post-hearing briefs on January 19.

While the material facts are generally not in dispute, the Acting Regional Director does not cite the record and accordingly misstates a number of facts. As a general matter, the Board therefore cannot rely on the recitation of the facts in the DDE.

WTI's business is managing and operating the Wang Theatre performance hall, located at 270 Tremont Street in Boston, Massachusetts. [Tr. 22]. The Wang Theatre is part of the Citi Performing Arts Center, along with the Shubert Theatre, which is located at 265 Tremont Street and operated by a separate non-profit corporation, Tremont Theater, Inc. [Tr. 22]. Petitioner does not seek to represent any musicians employed by TTI or at the Shubert Theatre.

As way of background, BMA and WTI once had a collective bargaining agreement that covered musicians employed by WTI. [DDE 2]. The most recent BMA-WTI CBA expired on September 2, 2007. [Exh. A]. It was last extended through December 31, 2007. [Exh. B]. WTI and BMA never negotiated a successor agreement to the 2004-2007 CBA, and the bargaining relationship lapsed. Conceding that WTI has not recognized BMA for a number of a years, Petitioner left blank Box 7b of the Petition, which asks whether "Petitioner is currently recognized as Bargaining Representative and desires certification under the Act."

The undisputed record evidence is that the bargaining relationship lapsed because WTI does not control the use of music and musicians at the Wang Theatre.² Szczepkowski testified: "The Wang talked with the Boston Musicians Association, but I would have to say we reached a point where I think we felt that we could not bargain over things that we didn't control." [Tr. 30]. Those issues that WTI does not control are "whether there were live musicians" and "whether the number of musicians to be employed." [Tr. 31]. As the Acting Regional Director conceded, those decisions are made by third-party producers. [DDE 2-3].

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¹ The DDE inaccurately states that TTI is WTI's "not-for-profit arm." [DDE 2]. In fact, WTI and TTI are separate nonprofit corporations. [Tr. 22].

While Petitioner promised evidence to the contrary, [Tr. 40], it was never produced.

In this regard, it is important to understand that third-party producers, not WTI, produce the shows that run at the Wang Theatre. [DDE 1]. These shows include touring "Broadway" theatrical musicals, as well as non-musical theatrical performances, concerts, dance shows, and other "star attractions." [DDE 1]. There are generally about 20 to 25 "shows" at the Wang Theatre each year. [Tr. 24]. In 2015, there were 22; in 2014, 21. [Tr. 24]; [Exh. D]. The musicals and other theatrical performances generally run for two or three weeks, with eight "productions" — that is, performances — per week. The other shows generally run for a single production, or a few at most. *See* [Exh. D].

The producer's product is the show itself, over which it has complete control. WTI's business is not the show but rather operating the Wang Theatre, making it available to the independent producers. WTI may "rent" the Wang Theatre, in which case the producer receives all the ticket proceeds and retains all the financial risk. [DDE 1]. Alternatively, WTI "promote" the show, in which case WTI would share the financial risk and upside with the producer. [DDE 2].

While the details of the promoter-producer contracts vary, the basic structure of the arrangement is consistent. The producer provides a "fully produced and cleared Show." [Exhs. G-I at Art. I, Sec. B]. The producer is paid a weekly "guarantee" out of the ticket revenue. [Exhs. G-I at Art., Sec. B.1.a]. Defined "show expenses" are reimbursed out of the ticket revenues to the party that incurs the cost. [Exhs. G-I at Art. V, Sec. A.4]. If there is money left after paying the guarantee and show expenses, then WTI and the producer "split" the remaining profit, pursuant to a negotiated formula. [Exhs. G-I at Art. V, Sec. B.3]. The DDE inaccurately states that WTI only produced three shows since 2014. [DDE 2]. That fact is not in the record, and WTI has had a promotional role in 16 of the 43 shows during that time.

Whether WTI just rents the Wang Theatre or also serves as the promoter, the producer controls all decisions involving the show itself — including all decisions regarding the use of music and musicians. The Acting Regional Director acknowledged that the producer determines:

(1) "whether live or recorded music will be used for a production"; (2) "how many musicians [are] required for each production"; (3) "whether local musicians will be hired"; and (4) "if [local musicians are hired], how many." [DDE 2-3].

Further, in the case of touring musicals, the producer often has a collective bargaining agreement with the Petitioner's affiliated international, the American Federation of Musicians, ("AFM"). *See* [DDE 2 n.2]. For all three musicals in the record, the producer had a CBA with the AFM. [Tr. 16]. Among other things, these AFM-producer CBAs will "dictate the amount of local hires required." [Tr. 67]. BMA refused to produce these AFM-producer CBAs, [Tr. 80], even though the putative bargaining-unit members work side-by-side with musicians covered by those contracts. [Tr. 16, 31]. The Acting Regional Director was compelled to, and the Board should, draw an inference that these withheld CBAs are inconsistent with BMA's position in this matter.

The independent producers directly and solely employ the vast majority of musicians who work at the Wang Theatre. There is no evidence regarding WTI employing any musician for a show that was not a traveling Broadway musical. For the three traveling Broadway musicals in the prior two years, the producers directly hired and solely employed at least some musicians for each show. [DDE 2]. The Acting Regional Director acknowledged that, since 2014, the producers have solely employed all musicians who have been employed at the Wang Theatre. [DDE 3]. The Acting Regional Director accurately summarized: "No one in the petitioned-for unit has worked for [WTI] in the past year, and there is no indication as to when they will work again." [DDE 5].

The producer-hired musicians have included "traveling" musicians, who perform at multiple cities on the tour. For all three musicals in the prior two years, the traveling musicians were covered by a CBA between the producer and the AFM. [DDE 2 n.4]; [Tr. 16]. The producer-hired musicians have also included local musicians, who have performed only during the show's run at the Wang Theatre. For instance, the producers of *Elf* hired both the traveling and local musicians in that show's orchestra during its run at the Wang Theatre in December 2015. [DDE 2 n.3]. Whether "traveling" or "local", musicians directly hired by the producer are not part of the putative bargaining unit. *See* [DDE 5].

The putative bargaining unit would only include: Those musicians that WTI may source for independent producers, at the request of the producer, to be integrated into the producer's orchestra during its run at the Wang Theatre. On increasingly rare occasions — and not since 2014 — WTI has so sourced musicians to serve under the direction of a producer. [DDE 3]. The producers of two traveling Broadway musicals in 2014, *Annie* and *White Christmas*, requested WTI's assistance in finding local musicians. [DDE 3]; [Tr. 27-28]. WTI, through its musical contractor, sourced the number of musicians requested by the producer. [Tr. 31].

On both these occasions in 2014, the putative bargaining unit members were integrated with musicians who were directly hired by the producers, [DDE 2], and covered by AFM-producer CBAs, [Tr. 16]. For *Annie*, the integrated orchestra included 5 musicians who were directly hired by the producer to travel with the show, and 8 musicians who were locally sourced by WTI for the producer. [DDE 2]. For *White Christmas*, the integrated orchestra included 2 musicians who were directly hired by the producer to travel with the show, and 13 musicians who were locally sourced by WTI for the producer. [DDE 2]. In all, 17 musicians were sourced by WTI for the producers. They worked between 19 and 105 hours. [DDE 2].

The Acting Regional Director acknowledged that both integrated orchestras played under the sole supervision of the producer's conductor, who has "control over the musicians' performance, regardless of how the musicians are sourced." [DDE 3]; [Tr. 32]. While the Acting Regional Director labeled such supervision "artistic control", the DDE does not explain what that means other than that these employees are artists. [DDE 3]. Beyond doubt, the producers, through their conductors, oversee the work of the musicians during performances and rehearsal. [Tr. 32]. The producers also determine what music and instruments musicians will play. [Tr. 28].

The Acting Regional Director acknowledged that there is no evidence of day-to-day supervisory control by WTI or its agents. [DDE 3]. Musicians are thus fundamentally different than those employees who are governed by collective-bargaining agreements between WTI and various unions. *See* [DDE 3]. For instance, the stagehands hired by WTI, and represented by a union, work under the direction of WTI's "production manager." [Tr. 60]. These employees can be supervised by WTI's production manager because their work is generally the same for each show. *See* [Tr. 59-61]. The work of WTI's ushers, for instance, is in no way affected by the content of the producer's show. [Tr. 59]. By contrast, musicians' work is show-specific, like the producers' employees who operate sound and lighting during the show. *See* [Tr. 60].

The Acting Regional Director did not dispute that the producers indirectly control the wages and benefits of the putative bargaining unit members. The producers have required that they be paid in compliance with "local union requirements", through the terms of the producer-WTI agreements. [Exhs G and H at Art. III, Sec. E]. The putative members were, in fact, paid the applicable "union scale" published by Petitioner. [DDE 2]; [Exh. F]; [Tr. 28]. In addition, because BMA refused to produce the AFM-producer CBAs, the Board should infer that the AFM and producers have indirectly set the wages of the putative bargaining unit members. [Tr. 80].

The Acting Regional Director did not dispute that the wages and benefits of putative bargaining unit members are passed through to the show. While WTI housed the wages and benefits to musicians it sourced to the producers of *Annie* and *White Christmas* on its payroll, those costs were defined in the WTI-producer agreements as a "documented show expense" and therefore WTI was "reimbursed" out of the ticket revenue. [Exhs. G and H at Art. III, Sec. E; Art. IV, Sec. 4.Gl.³

Finally, the Acting Regional Director chose to ignore a critical undisputed fact — the BMA would seek to exert secondary pressure on the producers if it were certified to represent the putative bargaining unit. BMA did not seek a unit that included the producers. Yet BMA has admitted that its primary goal in bargaining with WTI would be to pressure **the producers to lay off its own employees.** Petitioner Counsel explained: "If we, [WTI and BMA], have a collective bargaining agreement ..., what would happen is [the producer] would lay off a number of its touring musicians and the venue would hire local musicians." [Tr. 17]. For example, BMA's current contract with the Boston Opera House requires producers, who do not have a CBA with the AFM, to layoff half of their own musicians and use union musicians. [Tr. 18]; [Exh. 1 at 5]. In addition, BMA suggested that it may seek to limit the producer's right to use recorded music. [Tr. 39]. BMA did not suggest it would seek to bargain over wages and benefits, and it presumably would not, given that bargaining unit members have been paid the union scale Petitioner has published.

³ The DDE inaccurately states that WTI "reimbursed" the producer of *Elf* for "eight local musicians." [DDE 2 n.3]. The WTI-producer agreement defined the wages and benefits paid by the producer for 5 musicians to be a "local documented expense" to be "reimbursed" out of ticket revenue. [Exh. I at Art. III, Sec. E; and Art. IV, Sec. 4.G]. Thus, just like for *Annie* and *White Christmas*, the show paid for the local musicians.

The Decision and Direction of Election

The Acting Regional Director found that the musicians sourced by WTI to the producers of *Annie* and *White Christmas* were **solely employed by WTI.** Inexplicably, the Acting Regional Director found that "there was no clear evidence that the producers control or even affect the terms of employment" for the putative bargaining unit. [DDE 4]. That conclusion, however, ignores all of the specific factual findings and undisputed facts discussed above — that the producers' conductors supervise the integrated orchestras; that the producers control the amount of unit work; that the producers have indirect control over wages and benefits; and that BMA would seek to pressure the producers, through WTI, to lay off the producers' musicians.

In finding that WTI was the sole employer, the Acting Regional Director relied exclusively on the fact that WTI served as a hiring agent — "it appears that [WTI] hires the employees and as such clearly is an employer under the Act." [DDE 3]. The Acting Regional Director did not find that WTI otherwise controlled any terms and conditions of employment. Rather, the Acting Regional Director found that there was no evidence of control by either WTI or the producers. [DDE 3].

Next, the Acting Regional Director concluded that a joint-employer unit is not supported by the evidence. [DDE 4]. There was no reason to address this issue, however. Unlike the putative employer in the case cited by the Acting Regional Director, *Central Transport, Inc.* 328 NLRB 407 (1999), WTI does not claim that a joint-employer unit **is** appropriate. The Acting Regional Director is correct that "[WTI] has not demonstrated the existence of a joint employer relationship", [DDE 4], but that is entirely irrelevant. WTI's position in this matter has only been that a unit with WTI as a single employer **is not** appropriate. While a party seeking a joint-employer unit may have the burden to establish joint employment, that does not mean that every petitioned-for single-employer unit is appropriate.

The Acting Regional Director acknowledged but did not substantively address the undisputed fact that there has been no work in the bargaining unit in more than a year. *See* [DDE 5]. The Acting Regional Director could not cite a single case where an election was ordered and the employer had not employed anyone in the bargaining unit in over a year. The Acting Regional Director confused the issue. While individual employees who have not worked in the prior year may be eligible in certain circumstances, the issue here is not about individual eligibility. Rather, the issue is the complete lack of any employment in the unit at all in the prior year. The Board has never ordered an election in such a case.

Finally, based on a misreading of *Julliard School*, 208 NLRB 153, 155 (1974), the Acting Regional Director ordered an election among musicians who worked at least 15 performances total in the prior two years. [DDE 5]. In *Steppenwolf Theatre Co.*, the Board clarified that, under the *Juilliard School* formula, employees must have worked either (1) at least two shows for a total of 40 hours during the prior year, or (2) a total of 120 hours during the prior two years. *Steppenwolf Theatre Co.*, 342 NLRB 69, 69 (2004). The Acting Regional Director ignored *Steppenwolf Theatre*. In fact, it is undisputed that no musician would be eligible to vote here under the properly stated *Julliard School-Steppenwolf* formula.

Standard of Review

The Board should grant review, and dismiss the petition. Pursuant to Section 102.67(c) of the Board's Rules and Regulations, a request for review of a Regionals Director's decision in a representation case may be granted, *inter alia*, upon the following grounds:

- (1) That a substantial question of law or policy is raised because of: (i) the absence of; or
- (ii) a departure from, officially reported Board precedent.
- (2) That the regional director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.

29 C.F.R. § 102.67(c).

Summary of Argument

The bargaining unit is inappropriate for three independent reasons:

- 1. The undisputed facts establish that the independent producers, not WTI, are the primary employers of the individuals in the putative bargaining unit. The Board has never endorsed, and should not here endorse, a unit for a non-primary, supplier-only employer.
- 2. The Acting Regional Director acknowledged that there has been no work in the putative unit in over a year. The Board has never endorsed, and should not here endorse, a unit in which there has been no work in the prior year.
- 3. There are no eligible voters under any eligibility formula which has ever been endorsed by the Board. The Board has never endorsed, and should not endorse here, an eligibility formula that includes employees who worked less than 120 hours in the prior two years.

Argument

- 1. THE BARGAINING UNIT IS NOT APPROPRIATE BECAUSE THE INDEPENDENT PRODUCERS ARE THE PRIMARY EMPLOYER OF THE MEMBERS OF THE BARGAINING UNIT.
- **A.** The producers are the primary employers of the putative bargaining unit. There is no evidence that WTI is anything more than a hiring agent of bargaining unit members.

There is no claim that WTI has any control over the amount of work for the putative bargaining unit. Rather, it is undisputed that the producers determine the amount of work for local musicians. Again, the Acting Regional Director conceded that "the producer determines whether live or recorded music will be used for a production; whether local musicians will be hired; and if so, how many." [DDE at 3]. The Acting Regional Director also acknowledged: "Whether or not local musicians are hired is often determined by any contract between the producer and the [AFM]." [DDE 2 n.2]. Indeed, BMA admitted that its bargaining goal would be to create more work by pressuring **the producers** to lay off their own employees. [Tr. 17].

The Acting Regional Director conceded that there is no evidence of "traditional supervisory authority" by WTI. Indeed, the record evidence is that supervisory authority rests with the producers' conductors, not any agent of WTI. For instance, while the record many not establish "who has authority to discipline a musician for showing up late for rehearsal", [DDE 3], the Acting Regional Director did not consider whether that has ever happened. Given that the conductors supervise the rehearsals, [Tr. 32], they have the relevant potential control. *See Browning-Ferris Indus. of California, Inc.*, 362 NLRB No. 186 (Aug. 27, 2015).

The producers indirectly control the wages and benefits of the members of the bargaining unit. The WTI-producer agreements have required that bargaining unit members be paid at union scale. [Exhs G and H at Art. III, Sec. E]. BMA refused to produce the AFM-producer CBAs, so the Acting Regional Director could not definitively determine whether those CBAs required local musicians be paid at union scale. [Tr. 80]. The Board should infer that the AFM-producer CBAs require wages be paid at union scale. In any case, the record certainly establishes that WTI does not alone control wages.

In sum, the record evidence is that the producers are the primary and "user" employer.

The Acting Regional Director conclusion otherwise is clearly erroneous.

B. No Board precedent supports the unit endorsed by the Acting Regional Director. The Board has never approved a single-employer unit that includes the hiring agent (here WTI) and excludes the primary, "user" employers (here the producers). The Board should not take that unprecedented step here. It would undermine the purposes of the Act, requiring fictitious bargaining by WTI, who does not control the terms and conditions of employment, and encouraging unlawful secondary pressure on the producers, who do.

Kansas City Reparatory Theatre, 356 NLRB No. 28 (Nov. 16, 2010), although involving music and musicians, is inapposite. WTI's business — and as a result its relationship with musicians — is fundamentally different from the business of the employer in that case. The Kansas City Reparatory Theatre's business was "planning and producing" theatrical productions and thus it made the decisions regarding the use of music and musicians. *Id.* at *5-6. There were no independent producers, and thus Kansas City Reparatory Theatre controlled the terms and conditions of the musicians in the bargaining unit.

The Board has never endorsed a supplier-employer-only unit. While the Board has found user-employer-only units to be appropriate, *see Prof'l Facilities Mgmt.*, *Inc.*, 332 NLRB 345 (2000), a user employer, such as the producers here, has ultimate control over the critical terms and conditions. A user-employer-only unit, therefore, arguably allows the union to negotiate with the employer with the ultimate control over the terms and conditions of employment. By contrast, a supplier-employer-only unit sets up fictitious bargaining, empowering the union to pressure the user employer through the supplier employer. Here, BMA admits this — that its bargaining goal would be to pressure producers to lay off their own employees. [Tr. 17].

But if the Board were to allow an election for this single employer, then the producers would not have an obligation to bargain with BMA. Accordingly, BMA's stated bargaining strategy would amount to unlawful secondary pressure. For instance, in *Associated Musicians* (*Huntington Town House*), 203 NLRB 1078 (1973), the Board held that an AFM Local violated Section 8(e) by seeking to enforce a clause in contracts between Huntington, which operated ballrooms, and its patrons that required the patrons to hire only union musicians "on Huntington's premises." *Id.* at 1082. Under *Huntington Town House*, BMA could not lawfully pressure WTI to require the producers to only use BMA musicians at the Wang Theatre.

And the Board need not reach the issue of whether Petitioner's goal — to pressure the **producers** to lay off its own workforce — would be lawful. Beyond doubt, that goal confirms that a unit with WTI as the "single employer" would undermine the purposes of the Act. The Act, and particularly recent Board law, contemplates bargaining between a union and the employer with "ultimate control" over the terms and conditions of employment. *Browning-Ferris Indus. of California, Inc.*, 362 NLRB No. 186 (Aug. 27, 2015). Even where there may be an employment relationship, the Board will not endorse an election if third-parties control the key terms and conditions of the work. *See Northwestern University*, 362 NLRB No. 167 (Aug. 17, 2015) (declining to exercise jurisdiction because the Big Ten and NCAA set the key terms and conditions for students on Northwestern's football team).

Here, the producers control the terms and conditions of employment. Thus, if the putative bargaining unit members want to collectively bargain, it must be with the producers. Petitioner's international could seek to an expansion of the units covered by its contracts with the producers. BMA could seek to represent units with the producer as the employer. In any case, the collective bargaining must be with the producers, as they control the terms and conditions of employment.

2. THE BARGAINING UNIT IS NOT APPROPRIATE BECAUSE NO ONE HAS WORKED IN THE BARGAINING UNIT IS OVER A YEAR.

The Board should adopt a bright-line rule: Where no individual has been employed in the petitioned-for unit in the prior year, there should be no election. It is well-established that an election should not be held among "individuals with no real continuing interest in the terms and conditions of employment offered by the employer." *Trump Taj Mahal Casino Resort*, 306 NLRB 294, 296 (1992). Where, such as here, no individual has been employed in the petitioned-for unit in the prior year, there are no individuals with the requisite "continuing interest."

Indeed, there is no precedent for the Board endorsing an election for a unit in which there has been no employment within the prior year. The Acting Regional Director cited *Julliard School*, 208 NLRB 153 (1974), [DDE 5], but in that case there had been employees in the prior year. The Acting Regional Director misunderstood the issue to be about individual eligibility — whether employees should be "disenfranchised simply because they have not worked in a year." [DDE 5]. In fact, the issue is about whether the unit is appropriate at all, that is whether there can be an appropriate unit when there has been no employment at all in the prior year. The Board has never endorsed such a unit.

And the Board should not take that unprecedented step here. It would not effectuate the purposes of the Act to create a fictional work force to elect a union to negotiate a collective bargaining agreement for an as yet unhired real work force. Indeed, there is substantial reason to believe there may never be anyone in the bargaining unit ever again. If producers choose to directly hire musicians — like the producers of *Elf* did — then there will be no bargaining unit work. As the Acting Regional Director acknowledged: "there is no indication as to when [bargaining unit members] will work again." [DDE 5].

3. THE BARGAINING UNIT IS NOT APPROPRIATE BECAUSE THERE ARE NO ELIGIBLE VOTERS UNDER ANY ELIGIBILITY STANDARD THAT HAS BEEN ENDORSED BY THE BOARD.

The eligibility standard adopted by the Acting Regional Director is lower than any standard previously approved by the Board. Indeed, no musician would be eligible here under any eligibility formula that has ever been endorsed by the Board. While WTI recognizes that Regions have discretion in setting eligibility formulas, there are limits. The Acting Regional Director exceeded those limits by allowing, for the first time, employees who worked less than 120 hours in the prior two years to vote.

The Acting Regional Director's reliance on the "Julliard School" formula ignores the Board's subsequent clarification of Julliard School, 208 NLRB 153, 155 (1974) in Steppenwolf Theatre Co., 342 NLRB 69, 69 (2004). Julliard School itself refers to "5 working days over a 1-year period" and "15 days over a 2-year period." But contrary to Petitioner counsel's reading of the law, that means 40 hours in the prior year or 120 hours in the prior two years. See Steppenwolf Theatre Co., 342 NLRB 69, 69 (2004).

In *Steppenwolf Theatre*, the Board clarified that under "the eligibility formula articulated by the Board in *Juilliard School*, 208 NLRB 153 (1974), part-time employees who have worked on at least two productions for a total of <u>40 hours</u> during the year prior to the eligibility date or who have worked a total of <u>120 hours</u> during the past 2 years are eligible to vote." *Steppenwolf Theatre Co.*, 342 NLRB 69, 69 (2004) (emphasis added). In *Kansas City Reparatory Theatre*, 356 NLRB No. 28 (Nov. 16, 2010), the musicians were hired for shows that ran for up to 45 performances, and thus appear to have reached the applicable hours thresholds.

Here, there would be no eligible voter under the properly stated *Julliard School-Steppenwolf Theatre* formula: (1) there have been no musicians during the prior year, and (2) those musicians who were employed in 2014 worked between 19 and 105 hours.

In fact, there would not be any eligible voters here under any eligibility formula that has ever been endorsed by the Board. *See DIC Entertainment, L.P.*, 328 NLRB 660 (1999) (two shows for a minimum of five working days in the last year or at least fifteen workings days in the last year); *American Zoetrope Productions*, 207 NLRB 621 (1973) (two shows during the past year); *Medion, Inc.*, 200 NLRB 1013 (1972) (two shows for five days over prior year); *Davison-Paxon Co.*, 185 NLRB 21 (1970) (four or more hours per week for the last quarter prior to the eligibility date).

Conclusion

Based on all the foregoing, WTI respectfully requests that its request for review be granted and the election be stayed pending resolution of the appropriate unit.

Respectfully submitted,

WANG THEATRE, INC.

/s/ Arthur G. Telegen_____

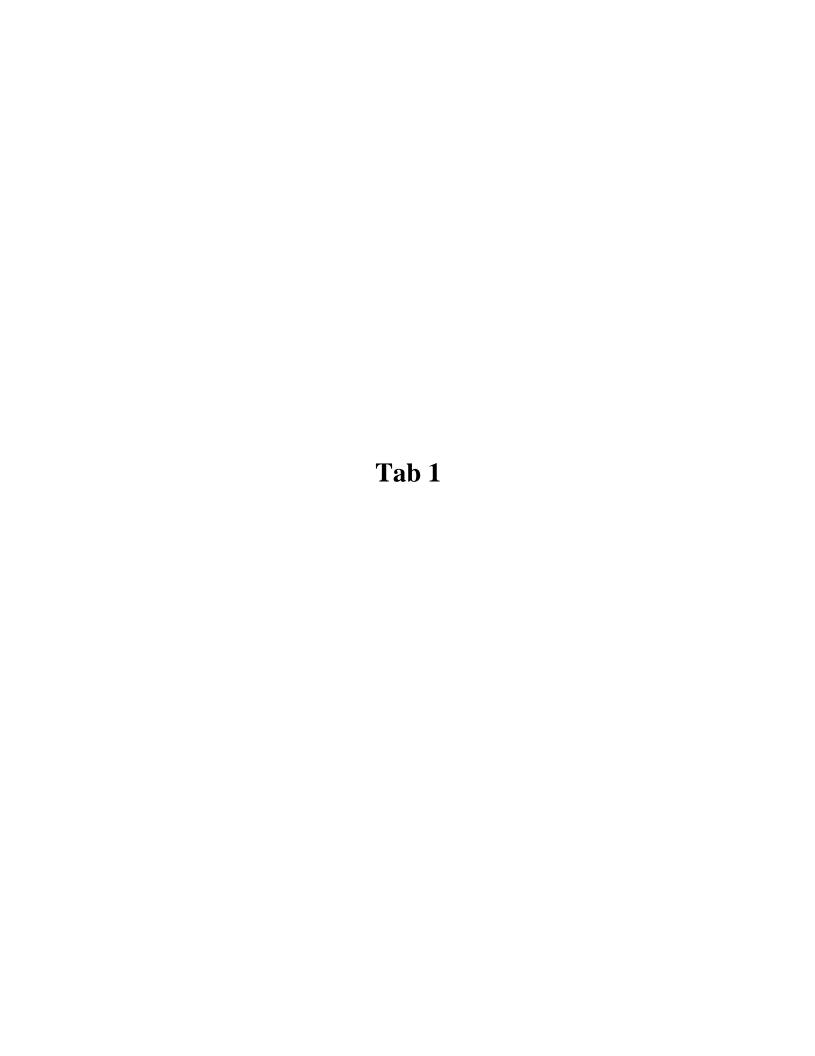
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Dated: February 12, 2016

Certificate of Service

The undersigned certifies that the foregoing and the accompanying documents have been
filed electronically with the National Labor Relations Board on the 12th day of February 2016
and also a copy has also been sent via email to counsel for Petitioner, Gabriel O. Dumont, Jr., a
gdumont@dmbpc.net; and the Acting Regional Director of Region, Elizabeth A. Gemperline, a
elizabeth.gemperline@nlrb.gov.

/s/ N. Skelly Harper



UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 1

THE WANG THEATRE, INC. D/B/A CITI PERFORMING ARTS CENTER

Employer

and

Case 01-RC-166997

BOSTON MUSICIANS ASSOCIATION, A/W AMERICAN FEDERATION OF MUSICIANS LOCAL UNION NO. 9-535, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

The Petitioner, Boston Musicians' Association, a/w American Federation of Musicians, Local Union No 9-535, AFL-CIO, seeks a representation election among musicians employed by The Wang Theatre, Inc. d/b/a Citi Performing Arts Center.

The Employer asserts that the petition should be dismissed on the ground that the petitioned-for employees do not constitute an appropriate bargaining unit because they are not solely employed by the Employer. Additionally, the Employer asserts that, because no musicians have worked in the past year, they lack sufficient work hours to make them eligible to vote under any reasonable formula ever adopted by the Board.

The Petitioner takes the position that the musicians constitute an appropriate collective bargaining unit, and that the Board should apply the eligibility standard announced in *The Julliard School*¹ to determine who is eligible to vote in the election.

For the reasons set forth below, I find that the petitioned-for employees constitute an appropriate unit for collective bargaining employed by the Employer, and that the eligibility formula set forth in *Julliard School* should be applied. Accordingly, I shall direct an election in the unit found appropriate.

I. FACTS

The Employer operates the Wang Theatre ("Wang"), a performance venue located at 270 Tremont Street, Boston, Massachusetts. The Wang presents theatrical performances, including musical theater productions, as well as concerts, dance shows, and other "star attractions." The Employer does not produce the performances, but contracts with independent producers, who bring the events to the Wang.

There are two types of contracts between the Employer and the producers. In the first arrangement, known as a "four-wall rental," the producer or promoter rents the venue, assumes

¹ 208 NLRB 153 (1974).

all expenses for the production, and reaps all profits from the performances. In the second, the venue acts as a promoter and shares the costs and revenues associated with the production. In 2014 and 2015, the only productions for which the Employer was a promoter were *Annie*, *White Christmas*, and *Elf.* Musical productions typically run for two or three weeks, with eight performances each week.

The producer determines whether a production will use live or recorded music. If live performers are to be used, the producer typically supplies at least some of the musicians. In some cases, the producer requests that the Employer hire local musicians, either to furnish the music for the performances or to supplement its own musicians. When this happens, the Employer uses a local contractor to hire the musicians specified by the producer. This contractor is an employee of the Employer.

In 2014, there were 21 productions at the Wang. Of those, only two – *Annie* and *White Christmas* – required the hire of local musicians. For *Annie*, five musicians traveled with the show, and eight were hired locally by the Employer. For *White Christmas*, two musicians traveled with the show and thirteen were hired locally. In all, seventeen musicians were hired by the Employer to perform at the Wang in at least one of those productions. The musicians hired by the Employer in 2014 worked between 19 and 105 hours for the two productions combined. In 2015, the Wang hosted 22 productions, none of which used local musicians hired by the Employer.³

From 2004 to 2007, the Petitioner and the Employer were parties to a collective bargaining agreement covering the same unit sought here. The parties did not sign a successor agreement, and have not had a contractual relationship since 2007.

Employer witness Michael Szczepkowski acknowledged that the procedures for hiring musicians, as well as the respective rights of the Employer and the producers, have not changed since the parties had a collective bargaining agreement in 2004-2007. Both then and now, producers determined how many musicians were required for each production, as well as the number of local musicians to be hired. Local musicians are paid according to the union wage scale.⁴

The Petitioner had a collective bargaining agreement with the Employer's not-for-profit arm, Tremont Theatre, Inc., which operates the Shubert Theatre in Boston, and currently has an agreement with the Opera House, an unaffiliated venue in Boston. Both venues present productions similar to those produced at the Wang. Both have contracts with producers that are similar or identical to those between the Employer and the producers with which it contracts.

² Whether or not local musicians are hired is often determined by any contract between the producer and the American Federation of Musician's (AFM), the affiliated national organization.

³ In the final production of the year, *Elf*, the producer hired and paid eight local musicians. The Employer reimbursed the producer for the musicians. This was an apparently unprecedented arrangement at the Wang.

⁴ Traveling musicians, who tour with the production, are paid according to Pamphlet B or the Short Engagement Tour (SET) Agreement, which sets forth the wages and working conditions for traveling musicians. Rule 24, which is part of Pamphlet B and SET, addresses the hiring of local musicians and dictates the number of local hires. For example, Rule 24 establishes requirements for laying off traveling musicians and hiring local ones.

The Employer also has collective bargaining agreements with various unions representing stagehands, ushers, wardrobe employees, employees who load and unload equipment on and off trucks, box office employees, and ticket takers. In each case, the Employer provides employees to perform those functions, and the producer must assume the contractual cost of those employees.

Producers have artistic control over the shows they bring to the Wang. The producer determines whether live or recorded music will be used for a production; ⁵ whether local musicians will be hired; and if so, how many. The producer employs the conductor who has artistic control over the musicians' performance, regardless of how the musicians are sourced. There is no evidence in the record indicating whether the conductor possesses supervisory authority other than artistic control.

II. CONCLUSIONS AND ANALYSIS

A. The Wang Theatre, Inc. is the employer of the musicians

The Employer takes the position that there is no appropriate bargaining unit because it is not the sole statutory employer of the local musicians who perform at the Wang. According to the Employer, the producer of each show has "ultimate control" over the musicians' terms and conditions of employment, and that an election should not be conducted because third parties control the key terms and conditions of the work. In support of this contention, the Employer contends that the producer determines whether and how many local musicians are to be hired, sometimes even hiring them directly, and that the musicians work "under the sole direction and supervision of the producer's conductor."

I do not agree. I note that there is little evidence in the record concerning the traditional indicia of the employer-employee relationship relative to the producers. In particular, despite the Employer's assertion that the producer has sole discretion over whether local musicians are hired, this term of employment is ultimately determined by the contract negotiated between the Employer and the producer. Moreover, it does not appear that the producer retains any control over the qualifications of those hired, except that they are able to play the required instruments; rather, it appears that the Employer hires the employees and as such clearly is an employer under the Act.

Additionally, although the producer's conductor clearly has artistic control over the musicians, there is no evidence indicating where other traditional supervisory authority lies, beyond the Employer's hiring of employees. For example, the record is silent on who has authority to discipline a musician for showing up late for a rehearsal.

Finally, I note that nothing has changed in the respective authorities of the Employer and producers since 2007, when the parties last had a collective bargaining relationship. The Employer's sole witness acknowledged that the essential responsibilities of the producers and

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⁵ The 2004-2007 contract prohibited the Employer from allowing recorded music to be used, in order to avoid displacing musicians. A side agreement was negotiated that made an exception for the Radio City Christmas Spectacular.

the Employer remain unchanged since the expiration of the 2004-2007 contract. If it was appropriate then for the Petitioner to represent and bargain on behalf of the musicians at issue here, then it is still appropriate today. The Employer has presented no evidence of a history of bargaining on a multiemployer basis.

Thus, in the absence of any clear evidence that the producers control or even affect the terms of employment for the musicians, I find that the Employer has not demonstrated the existence of a joint employer relationship and this unit is limited to the Employer. As a single employer unit, the petitioned-for unit is presumptively appropriate under the Act. *Central Transport, Inc.*, 328 NLRB 407, 408 (1999). Therefore, I find that the petitioned-for unit is appropriate.

B. The appropriate formula for voter eligibility

The parties disagree about the formula that should be used to determine voter eligibility. The Employer asserts that, at the very least, any eligible voter must have worked for the Employer in the past year. Additionally, the Employer takes the petition that the formula should be based on the number of hours worked, rather than the number of days. The Petitioner, on the other hand, urges that the Region adopt the formula established in *Julliard School*, 208 NLRB 153 (1974), and followed in *Kansas City Repertory Theatre*, 356 NLRB No. 28 (2010).

For the reasons set forth below, I find it is appropriate to apply the *Julliard School* formula in the circumstances presented here.

The Board's most widely used formula for determining voter eligibility for on-call or part-time employees was set forth in *Davison-Paxon Co.*, 185 NLRB 21, 23-24 (1970). Under *Davison-Paxon*, "an employee is deemed to have a sufficient regularity of employment to demonstrate a community of interest with unit employees if the employee regularly averages 4 or more hours of work per week for the last quarter prior to the eligibility date." *Davison-Paxon* at 23-24. However, the Board has also fashioned alternative eligibility formulas to fit unique conditions of particular industries where special circumstances exist in order "to permit optimum employee enfranchisement and free choice, without enfranchising individuals with no real continuing interest in the terms and conditions of employment offered by the employer." *Trump Taj Mahal Casino*, 306 NLRB 294, 296 (1992), enfd. 2 F.3d 35 (3d Cir. 1993); *DIC Entertainment*, *L.P.*, 328 NLRB 660 (1999), enfd. 238 F.3d 434 (D.C. Cir. 2001). The Board has found that "special circumstances" include irregular employment patterns within the entertainment industry. See *The Julliard School*, *supra*, (employees were eligible to vote where they had worked on two productions for a total of 5 days over a 1 year period or at least 15 days over a 2-year period).

I find that the facts of this case show a "special circumstance" aligned with that of *Julliard School* and that the formula set forth within that decision is appropriate and applicable. The petitioned-for musicians work irregular employment patterns, as determined by the contracts between the Employer and producers. When local musicians are hired, they work alongside traveling musicians, rehearsing and performing together for the duration of the production. Typically, a production runs for two or three weeks, with multiple performances on certain days, and musicians are also required to rehearse with the orchestra. Thus, for each of

the two productions in 2014 that used local musicians, employees in the proposed unit worked 16 performances, plus rehearsals.

The Employer takes the position that the Region should adopt the following "objective rule": An election should not be held where the employer has not employed any employees in the petitioned-for unit within the prior year. However, such a rule has no support in Board precedent, and flies in the face of *Julliard School*, where the Board expressly recognized that employees with irregular employment patterns, especially in the entertainment industry, should not be disenfranchised simply because they have not worked in a year. *Julliard School*'s alternative eligibility tests make it clear that the Board explicitly rejected the Employer's reasoning.

In the circumstances presented here, it is appropriate to apply the formula established in *Julliard School*, *supra*, and adopted in *Kansas City Repertory Theatre*, *Inc.* Thus, employees eligible to vote in the election will include all employees who worked on two productions totaling five days during the past year, or those who worked at least fifteen days in the past two years. As the Board noted in *Kansas City Repertory Theatre*,

The spirit of Julliard allows for the optimum employee enfranchisement and free choice that is sought by the Board in just this type of case: an entertainment industry employer with a group of employees who, but for an irregular employment pattern, would otherwise constitute an appropriate unit for the purpose of collective bargaining. Id.,slip op. at 8.

Accordingly, I find, consistent with *Julliard School*, *supra*, that musicians employed by the Employer on two productions for a total of five working days over a one-year period, or fifteen days over a two-year period have a community of interest warranting their inclusion in the voting unit.

C. Appropriateness of a mail ballot election

Musicians hired to perform at the Wang work sporadically and with no predictable frequency or schedule. No one in the petitioned-for unit has worked for the Employer in the past year, and there is no indication as to when they will work again.

The Petitioner argues that because of the irregular and unpredictable work schedules, a substantial number of employees will be disenfranchised unless the election is conducted by mail ballot. The Employer asserts that the election should be conducted at the theater, and that it should be postponed until employees in the petitioned-for unit are actually working again.⁷

It is well established that a Regional Director has broad discretion in determining the method by which an election is held, and whatever determination a Regional Director makes

⁶ The Employer misstates the *Julliard School* test, and urges me to adopt a formula requiring employees to have worked a certain number of hours, rather than days. However, such a formula has never been adopted by the Board, and I see no justification for doing so here.

⁷ The Employer could not predict when local musicians would be hired for a performance at the Wang. It cited no authority for adopting a wait-and-see approach to conducting an election, and such an approach is inconsistent with Board policies and practices.

should not be overturned unless a clear abuse of discretion is shown. San Diego Gas & Electric, 325 NLRB 1143, 1144 fn. 4 (1998); Nouveau Elevator Industries, 326 NLRB 470, 471 (1998). In San Diego Gas & Electric, the Board set forth guidelines clarifying the circumstances under which it is within the Regional Director's discretion to direct the use of mail-ballots. Under the guidelines, a mail-ballot election may be appropriate where employees are scattered because of their job duties, geography, and/or varied work schedules, so that all employees cannot be present at a common place and at a common time to vote manually. GPS Terminal Services, 326 NLRB 839 (1998). See also NLRB Representation Casehandling Manual, Sec. 11301.2.

I find that the musicians in the petitioned-for unit are scattered in the sense that they are rarely in the same place at the same time. They report to the theater only when they are engaged to rehearse or perform, and the Employer could not predict when that would occur again. All employees in the bargaining unit perform for the Employer on a part-time basis, and most have other jobs in music or another field. These factors increase the chance that holding a manual election would disenfranchise voters. In these circumstances, I find that it is appropriate to conduct a mail ballot election.

CONCLUSION

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

- 1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- 2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
- 3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
- 4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
- 5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All musicians employed by The Wang Theatre, Inc. at its performance hall at 270 Tremont Street, Boston, Massachusetts, but excluding all other employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to

be represented for purposes of collective bargaining by BOSTON MUSICIANS ASSOCIATION, A/W AMERICAN FEDERATION OF MUSICIANS LOCAL UNION NO. 9-535, AFL-CIO.

A. Election Details

A mail ballot election will be conducted as follows: The election will be conducted entirely by mail. Mail ballots with detailed instructions will be mailed to the residences of all eligible employees from the Boston Regional Office on February 11, 2016. To be valid, the ballots must be received at the Boston Regional Office by the close of business on February 26, 2016. Any envelopes that are unsigned are automatically void. The count of mail ballots will be conducted at the Boston Regional Office at 11:00 a.m. on February 29, 2016.

The Employer should submit two sets of mailing labels for all unit employees to this office as soon as possible, but in no case later than February 1, 2016. If any party feels that the election materials need be in a language other than English, please notify me immediately. The Employer should advise me of the number of election notices it will need for posting at its facility by that date as well.

B. Voting Eligibility

Eligible to vote are those in the unit who worked for the Employer on two productions for a total of five working days over a one-year period, *or* a total of fifteen days over a two-year period preceding the eligibility date of January 22, 2016.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(I) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **February 1, 2016**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it

did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: January 28, 2016

ACTING REGIONAL DIRECTOR

NATIONAL LABOR RELATIONS BOARD

REGION 01

10 Causeway St FI 6 Boston, MA 02222-1001 Form NLRB-4910 (4-2015)



United States of America National Labor Relations Board



NOTICE OF ELECTION

INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL

<u>PURPOSE OF ELECTION</u>: This election is to determine the representative, if any, desired by the eligible employees for purposes of collective bargaining with their employer. (See VOTING UNIT in this Notice of Election for description of eligible employees.) A majority of the valid ballots cast will determine the results of the election. Only one valid representation election may be held in a 12-month period.

<u>SECRET BALLOT</u>: The election will be by secret ballot carried out through the U.S. mail under the supervision of the Regional Director of the National Labor Relations Board (NLRB). A sample of the official ballot is shown on the next page of this Notice. Voters will be allowed to vote without interference, restraint, or coercion. Employees eligible to vote will receive in the mail *Instructions to Employees Voting by United States Mail*, a ballot, a blue envelope, and a yellow self-addressed envelope needing no postage.

<u>ELIGIBILITY RULES</u>: Employees eligible to vote are those described under the VOTING UNIT on the next page and include employees who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off. Employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election are not eligible to vote.

<u>CHALLENGE OF VOTERS</u>: An agent of the Board or an authorized observer may question the eligibility of a voter. Such challenge must be made at the time the ballots are counted.

<u>AUTHORIZED OBSERVERS</u>: Each party may designate an equal number of observers, this number to be determined by the NLRB. These observers (a) act as checkers at the counting of ballots; (b) assist in identifying voters; (c) challenge voters and ballots; and (d) otherwise assist the NLRB.

METHOD AND DATE OF ELECTION

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At 4:00PM on Thursday, February 11, 2016, ballots will be mailed to voters from the National Labor Relations Board, Region 01, 10 Causeway St Fl 6, Boston, MA 02222-1001. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Thursday, February 18, 2016, should communicate immediately with the National Labor Relations Board by either calling the Region 01 Office at (617)565-6700 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

All ballots will be commingled and counted at the Region 01 Office on Monday, February 29, 2016 at 11:00AM. In order to be valid and counted, the returned ballots must be received in the Region 01 Office prior to the counting of the ballots.

Form NLRB-4910 (4-2015)



United States of America National Labor Relations Board



NOTICE OF ELECTION

INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL

VOTING UNIT

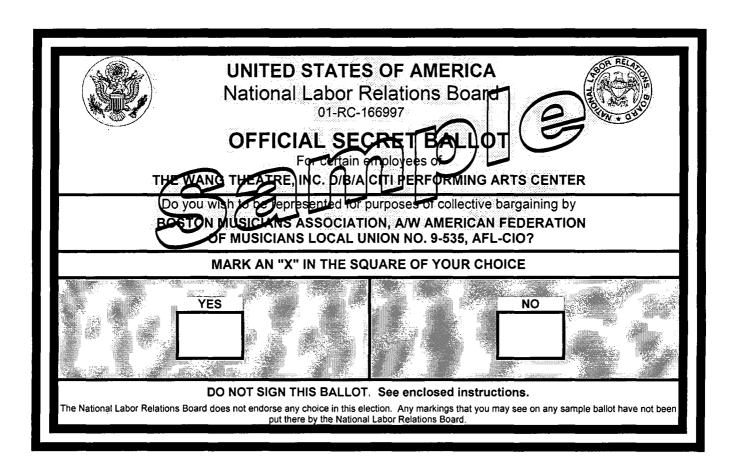
EMPLOYEES ELIGIBLE TO VOTE:

All musicians employed by The Wang Theatre, Inc. at its performance hall at 270 Tremont Street, Boston, Massachusetts, who were employed by the Employer during the payroll period ending January 22, 2016.

EMPLOYEES NOT ELIGIBLE TO VOTE:

All other employees, guards and supervisors as defined in the Act.

Eligible to vote are those in the unit who worked for the Employer on two productions for a total of five working days over a one-year period preceding January 22, 2016, or a total of fifteen days over a two-year period preceding January 22, 2016.



Form NLRB-4910 (4-2015)



United States of America National Labor Relations Board



NOTICE OF ELECTION

INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL

RIGHTS OF EMPLOYEES - FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union
- Choose representatives to bargain with your employer on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities
- In a State where such agreements are permitted, the Union and Employer may enter into a lawful unionsecurity agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the Union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the Union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).

It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.

The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both Employers and Unions to know what is expected of them when it holds an election.

If agents of either Unions or Employers interfere with your right to a free, fair, and honest election the election can be set aside by the Board. When appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

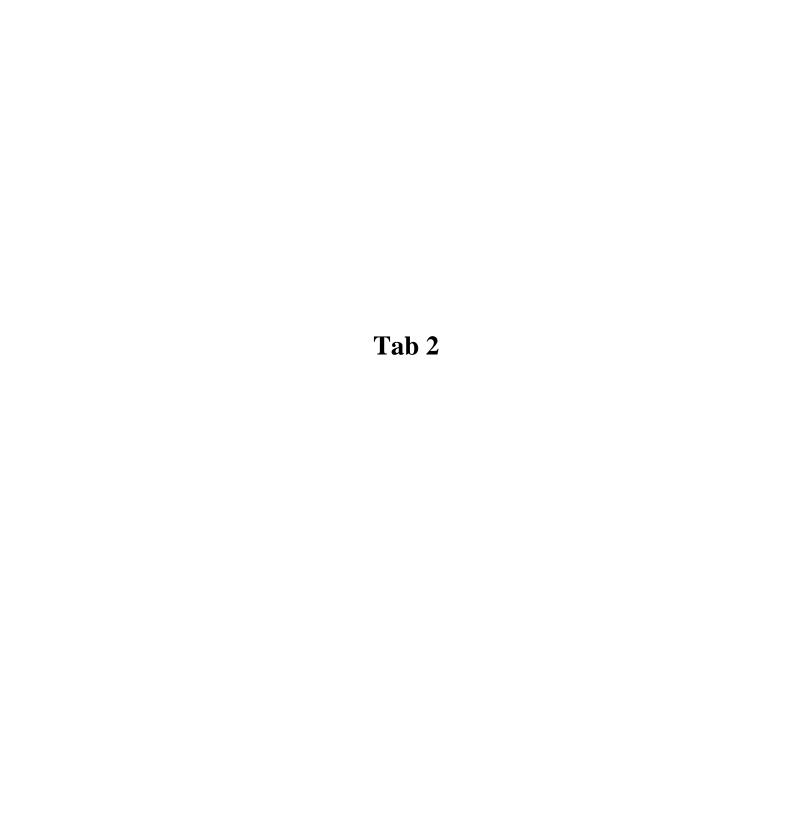
The following are examples of conduct that interfere with the rights of employees and may result in setting aside of the election:

- Threatening loss of jobs or benefits by an Employer or a Union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a
 party capable of carrying out such promises
- An Employer firing employees to discourage or encourage union activity or a Union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time where attendance is mandatory, within the 24-hour period before the mail ballots are dispatched
- Incitement by either an Employer or a Union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a Union or an Employer to influence their votes

The National Labor Relations Board protects your right to a free choice.

Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law.

Anyone with a question about the election may contact the NLRB Office at (617)565-6700 or visit the NLRB website www.nlrb.gov for assistance.



Name (Print)

Gabriel O. Dumont, Jr.

UNITED STATES GOVERNMENT NATIONAL LABOR RELATIONS BOARD RC PETITION

DO NOT WRITE IN THIS SPACE			
Case No. 01-RC-166997	Date Filed 01-05-2016		

Date

January 5, 2016

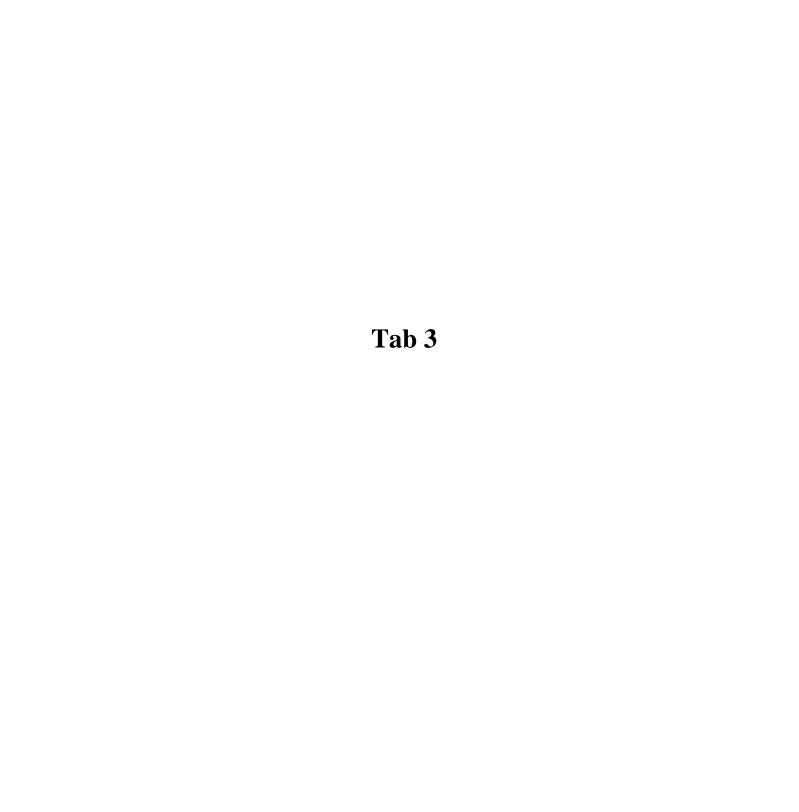
INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlrb.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act. 2a. Name of Employer 2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code) The Wang Theatre, Inc. d/b/a Citi Performing Arts Center 270 Tremont Street, Boston, Massachusetts 02116 3a. Employer Representative - Name and Title 3b. Address (If same as 2b - state same) Michael Szczepkowski, VP & General Manager same 3e. Fax No. 617-482-9393 617-451-1436 mszczepkowki@CitiCenter.org 4a. Type of Establishment (Factory, mine, wholesaler, etc.) 4b. Principal product or service 5a. City and State where unit is located: Performing Arts Center Performing Arts Boston, Massachusetts 5b. Description of Unit Involved 6a. No. of Employees in Unit: 20+ Included: Musicians 6b. Do a substantial number (30% or more) of the employees in the All other employees and managers and supervisors within the meaning of the Act unit wish to be represented by the Petitioner? Yes ✓ No Check One: 7a. Request for recognition as Bargaining Representative was made on (Date) 11/10/15 and Employer declined recognition on or about 11/10/15 (Date) (If no reply received, so state). Petitioner is currently recognized as Bargaining Representative and desires certification under the Act. 8a. Name of Recognized or Certified Bargaining Agent (If none, so state). 8b. Address none 8c. Tel No. 8d Cell No. 8e. Fax No 8f. F-Mail Address 8g. Affiliation, if any 8h. Date of Recognition or Certification 8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year) 9. Is there now a strike or picketing at the Employer's establishment(s) involved? If so, approximately how many employees are participating? (Name of labor organization) has picketed the Employer since (Month, Day, Year) 10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state) 10b. Address 10c. Tel. No. 10d. Cell No. 10e. Fax No 10f. E-Mail Address 11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to Mixed Manual/Mail 11a. Election Type: Manual ✓ Mail any such election. 11b. Election Date(s) 11c. Election Time(s): 11d. Election Location(s): January 19, 2016 12a. Full Name of Petitioner (including local name and number) 12b. Address (street and number, city, state, and ZIP code) Boston Musicians' Association, Local 9-535, AFM 130 Concord Avenue, Belmont, Massachusetts 02478 12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state) American Federation of Musicians 12d. Tel No. 12g. E-Mail Address 12e. Cell No. 12f. Fax No. 617-489-6400 617-212-9840 617-489-6962 patorch@msn.com 13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding. 13a. Name and Title Gabriel O. Dumont, Jr. 13b. Address (street and number, city, state, and ZIP code) 141 Tremont Street, Suite 500, Boston, Massachusetts 02111 13c. Tel No. 13d. Cell No. 13e Fax No. 13f. E-Mail Address 617-227-7272 617-733-4804 617-227-7025 gdumont@dmbpc.net I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Signature Signature WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT

Counsel

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



UNITED STATES GOVERNMENT NATIONAL LABOR RELATIONS BOARD STATEMENT OF POSITION

DO NOT WRITE IN THIS SPACE				
Case No.	Date Filed			
01-RC-166997	January 5, 2016			

INSTRUCTIONS: Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing. Note: Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to respond to items 3, 5, 6, and 8a-8e below. 1a. Full name of party filing Statement of Position c. Business Phone: 1e. Fax No.: The Wang Theatre, Inc. 617-482-9393 617-451-1436 1b. Address (Street and number, city, state, and ZIP code) 1f. e-Mail Address 1d. Cell No.: 270 Tremont St., Boston, MA 02110 2. Do you agree that the NLRB has jurisdiction over the Employer in this case? [X] Yes [] No (A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted) 3. Do you agree that the proposed unit is appropriate? [] Yes [X] No (If not, answer 3a and 3b.) a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards.) See attached letter. b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit. Added See attached letter. Excluded See attached letter. 4. Other than the individuals in classifications listed in 3b, list any individual(s) whose efigibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility. 5. Is there a bar to conducting an election in this case? [] Yes [X] No If yes, state the basis for your position. 6. Describe all other issues you intend to raise at the pre-election hearing. See attached letter The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at www.nirb.gov/what-we-do/conductelections/representation-case-rules-effective-april-14-2015. A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filling of the petition. (Attachment B) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be excluded from the proposed unit to make it an appropriate unit. (Attachment D) State your position with respect to the details of any election that may be conducted in this matter. 8a. Type; [] Manual [] Maid [] Mixed Manual/Mall 8b. Date(s) 8c. Time(s) 8d. Location(s) No election 8e. Eligibility Period (e.g. special eligibility formula) Bf. Last Payroll Period Ending Date 8g. Length of payroll period [] Other (specify length) []Biweekly X Weekly See attached letter. January 10, 2016 9. Representative who will accept service of all papers for purposes of the representation proceeding 9b. Signature of authorized representative 9a. Full name and title of authorized representative Michael Szczepkowski 1/12/16 9d. Address (Street and number, city, state, and ZIP code) 9e. e-Mail Address mszczepkowski@cltlcenter.or 270 Tremont St., Boston, MA 02110 9f. Business Phone No.: 617-532-1107 9g. Fax No. 9h. Cell No.

WILLFUL FALSE STATEMENTS ON THIS STATEMENT OF POSITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. Code, Title 18, Section 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Brand (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942+3 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information recuested by this form may preclude you from litigating issues under 102.06(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subposma and seek enforcement of the subposma in federal court.

Revised 3/21/2011	NATIONAL LABOR REI	ATIONS BOARD		
	QUESTIONNAIRE ON COMME	RCE INFORMATION		
Please read carefully, answer all applicat	ole items, and return to the NLRB Office. If add	itional space is required, please add a pa-	ge and identify item num	ber.
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71 Fed. Reg. 74942-43 (Dec. 13, 2006). The histories the NLRB to refuse to process any furth	NLRB will further explain these uses upon request. Dis ner a representation or unfair labor practice case, or m	sciosure of this information to the NLRB is volun lay cause the NLRB to issue you a subposena ar	rary. However, failure to sup ad seek enforcement of the s	pry the incompation may subposena in federal court.
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January 12, 2016

VIA E-FILING

Hilary Bede National Labor Relations Board, Region 1 10 Causeway Street, Suite 600 Boston, MA 02222

Re:

Wang Theatre, Inc. d/b/a Citi Performing Arts Center

Case 01-RC-166997

Dear Ms. Bede:

Wang Theatre, Inc. ("WTI" or "Employer"), submits this letter with respect to the above-captioned petition for an election among "Musicians" employed by WTI at the Wang Theatre. The petition was filed on January 5, 2015, by Boston Musicians' Association, Local 9-535, American Federation of Musicians (the "Union"). Enclosed are WTI's completed Form NLRB-505 and Ouestionnaire on Commerce Information.

The Region should dismiss the petition and not conduct an election. First, the petition should be dismissed because WTI has not employed any musicians since 2014. The Region should not apply the ad hoc, anything goes standard suggested by the Union. Rather, a representation election should not be held where, such as here, the employer has not employed any employees in the petitioned-for unit within the prior year. Musicians whom WTI happened to hire over a year ago should not decide whether musicians whom WTI may employ in the future will be represented by the Union. Indeed, as far as WTI is aware, there has never been an election where there had been no employees within the petitioned-for unit in the prior year. Thus, while the Region has raised the so-called *Julliard School* formula, neither it nor any other formula should be applied here.

In any event, no musicians would be eligible here under any formula that has ever been applied. Under the *Julliard School* formula, which appears to be the most inclusive formula that has ever been endorsed by the Board, employees are eligible if (1) they have worked on at least two shows for a total of 40 hours during the prior year, or (2) they have worked a total of 120 hours during the prior two years. *See Steppenwolf Theatre Co.*, 342 NLRB 69, 69 (2004). Here, no musicians qualify under the either prong: (1) there have been no musicians during the prior year, and (2) those musicians who were employed in 2014 worked under the 120-hour threshold.



Further, even if the Region were to create unprecedented voting rights for non-employees in this case, the unit would not be appropriate under the Board's case law. Critically, WTI does not control those terms and conditions over which the Union would seek to bargain if certified. Various independent producers, not WTI, produce the shows that run at the Wang Theatre. When WTI has hired musicians, it has been to provide them to the producers. WTI has paid their wages and benefits, but has not otherwise exercised control over the musicians.

Yet the Union has made clear that it does not take issue with musicians' wages and benefits. Indeed, WTI has chosen to pay these employees pursuant to the Wage Scale published by the Petitioner. Rather, the Union would seek to bargain over the decisions whether to use local musicians at all and, if so, how many. But those decision fall outside the scope of what has been the WTI-musician employment relationship. The various independent producers, not WTI, decide whether local musicians will be used and, if so, how many. Further complicating the matter, the producers often have their own CBAs with the Union's International, the American Federation of Musicians, that inform the use of musicians.

In sum, a unit could not be appropriate for this single Employer, because third parties — the multiple independent producers control critical terms and conditions. Nor could a "joint employer" unit be appropriate. If the producers and WTI are joint employers of the musicians that WTI hires, then the Union would have to petition for separate units of those musicians jointly employed by WTI and each producer. Even under Sturgis, Inc., 331 NLRB 1298 (2000), a jointemployer unit cannot include multiple "user employers" absent consent of the separate user employers. Id. at 1305.

Background

Wang Theatre, Inc., a Massachusetts nonprofit corporation, operates the "Wang Theatre" performance hall, located at 270 Tremont Street in Boston, Massachusetts. The Wang Theatre is part of the Citi Performing Arts Center, along with the Schubert Theatre, which is located at 265 Tremont Street. The Shubert Theatre is operated by a separate nonprofit corporation, Tremont Theater: Inc. The Union does not seek to represent musicians employed by or at the Shubert Theatre, because Tremont Theater, Inc. has not employed any musicians for even longer than WTI has not employed musicians, since 2012.

As way of background, the Union and WTI once had a collective bargaining agreement that covered musicians employed by WTI. The most recent CBA between the parties expired on September 2, 2007. [Exh. A]. That CBA was last extended through December 31, 2007. [Exh. B]. In addition, Tremont Theater, Inc. historically had separate collective bargaining agreements with the Union, the most recent of which expired on August 31, 2000. [Exh. C].

AVTI and the Union never negotiated a successor agreement to the 2004-2007 CBA, the bargaining relationship lapsed, and WTI has not recognized the Union for a number of a years. Indeed, the Union's petition concedes that the Employer has not recognized the Union. The Union left blank Box 7b, which asks whether the "Petitioner is currently recognized as Bargaining Representative and desires certification under the Act."



The Union has now petitioned for an election of "Musicians" employed by WTI at the Wang Theatre. The petition's claim in Box 6b that there are more than twenty musicians in the proposed unit ignores that the Employer has not employed any musicians since 2014.

Of course musicians regularly perform at the Wang Theatre, but they are not in the normal course employees of WTI. In this regard, it is important to understand that WTI's business is operating the theater, making it available to producers of attractions. Without exception, the traveling theatrical musicals and "star" performances that run at the Wang Theatre are not WTI's productions. Rather, independent producers pay WTI to provide a performance hall. The musicals typically run for two or three weeks, but may run for longer. The "star" performances typically run for a single night, or a few nights at most. Attached are the performance schedules for 2014 and 2015. [Exh. D].

Thus, the vast majority of musicians who perform as a part of these independent productions are **not** employed by the Employer. WTI does not employ either the "star" musicians or those musicians who are hired directly by the producers to accompany "star" performers. Nor does WTI employ the musicians hired directly by touring musicals.

The independent productions may choose to hire their own musicians for any number of reasons. In the case of touring musicals, the producers frequently have collective bargaining agreements with the Petitioner's International, the American Federation of Musicians, obligating the use of a particular number of musicians in all cities on the tour. Producers may also simply choose to tour with their own musicians, or to independently hire musicians in Boston. Increasingly in recent years, producers of some shows may also decide to use recorded music, and therefore not hire any musicians.

The musicians directly hired and employed by the independent productions may be non-union, non-Boston-union, or Boston-union musicians. In any case, they are not employees of WTI. The Employer simply provides its building to the independent shows, who have hired these musicians. Even under the most stretched reading of the law, that does not establish an employment relationship. Indeed, the Union has now clarified that it does not seek to represent those musicians who perform at the Wang Theatre but are not employed by WTI.

On increasingly rare occasions, WTI hires musicians at the request of an independent producer, to serve under the direction of the producer. WTI sources the number of musicians requested by the producer to play the instruments determined by the producer. The musicians so hired play the music selected by the producer, play under the supervision of the producer's conductor, and may be dismissed by the conductor if they do not perform as directed. WTI does not generate revenue by sourcing these musicians. Rather, it offers this service as an accommodation to out-of-town shows.

WTI pays the wages and benefits to these musicians, but its agreements with producers define those payments to be a "show expense", meaning that the producers reimburse WTI the cost of the wages-and-benefits payments. WTI has consistently paid these musicians "Union scale" wages and benefits. Again, this has been required by its agreements with producers.



In the past year, however, WTI has not even sourced musicians. During the course of 2015, there were over twenty shows at the Wang Theatre. Any musician who performed during any performance of any of those shows was employed directly by the producer and not by WTI. For instance, the producers of Elf: The Musical, which ran in November and December of 2015, directly hired and employed all musicians that it used in that production. See [Exh. I].

In 2014, the Employer did hire and provide musicians, but only for two shows. Of the twenty-one shows that year, musicians were hired for only two theatrical musicals:

In December 2014, for a production of White Christmas, WTI sourced thirteen musicians. The show ran for sixteen performances, and all thirteen musicians performed at each performance. The performances were less than three-hours long, and the musicians were paid for three hours of work for each performance. They were also paid for five hours of rehearsal time. In sum, the thirteen musicians worked and were paid for 53 hours — 16 performances x 3 hours-per-performance + 5 hours of rehearsal = 53.

In November 2014, for a production of Annie, WTI sourced nine musicians. The show ran for sixteen performances. Eight of the nine musicians performed at all sixteen performances. One musician was paid for five performances. The performances were less than three-hours long, and the musicians were paid for three hours of work for each performance. They were also paid for four hours of rehearsal time. In sum, the eight musicians were paid for 52 hours — 16 performances x 3 hours-per-performance + 4 hours of rehearsal = 52.

Attached are the payroll records for the musicians hired by WTI for these two 2014 musicals, along with a summary chart showing the hours worked by the seventeen musicians that Wang hired in 2014. [Exh. E]. In total, in the prior two years, no musician worked more than 105 hours.

WTI paid the musicians hired for these two 2014 shows pursuant to the wage scale published by the Petitioner. Specifically, they were paid pursuant to Wage Scale X, which covers "Professional Musical Theater not covered under terms of a Collective Bargaining Agreement." [Exh. F]: WTI committed to pay this rate in the contracts it entered into with the producers of those two shows. See [Exhs. G & H].

Other than sourcing these musicians, WTI did not further control their employment. The WTI-hired musicians were integrated with musicians directly employed by the producers. In the case of Annie, there were five producer-hired musicians. For White Christmas, there were two producer-hired musicians. On a day-to-day basis, both the WTI-hired and producer-hired musicians were supervised by conductors who were employed by the producers alone.

The Union has made clear in the past its unhappiness with the decreased use of local musicians. WTI believes that the Union's primary goal, if certified, would be to return to an era of live music played by large ensembles of local musicians. WTI would be unable to meaningfully bargain over such goals, unrealistic or not. The producers decide whether to use live music, and, if so, whether it is performed by local musicians.



The Region Should Dismiss the Petition

In light of the above facts, the Region should dismiss the petition without conducting an election.

WTI submits that this case should be governed by a bright-line rule: If an employer has not employed a single employee in the petitioned-for unit in the prior year, then there should not be an election. The Region must ask: Should musicians whom WTI happened to hire over a year ago vote on whether the Union will represent musicians whom WTI may hire in the future? Logic and precedent both answer "No".

While the Board has discretion to adopt eligibility formulas, there are limits. An election should not be held among "individuals with no real continuing interest in the terms and conditions of employment offered by the employer." *Trump Taj Mahal Casino Resort*, 306 NLRB 294, 296 (1992). And where no individual has been employed in the petitioned-for unit in the prior year, there are no individuals with the requisite "continuing interest." Thus, there should not be an election.

Indeed, as far as WTI is aware, there has never been an election where there had not been an employee in the petitioned-for unit in the prior year. Given the complete lack of employment in the petitioned-for unit in the prior year, an election would be inappropriate.

2. Moreover, there is no precedent for any eligibility formula under which even a single musician would be eligible to vote. The Region has raised the so-called "Jultiard School" formula, first adopted in Juilliard School, 208 NLRB 153 (1974). Under Jultiard School and its progeny, employees are only eligible if they satisfy one of two tests: (1) they have worked on at least two shows for a total of 40 hours during the prior year, or (2) they have worked a total of 120 hours during the prior two years. See Steppenwolf Theatre Co., 342 NLRB 69, 69 (2004).

Here, no musician satisfies either test of the *Julliard School* formula. In regard to the first test, no musician was employed in the prior year. In regard to the second test, no musician worked more than 105 hours, which is below the 120-hour threshold. Even under the exceedingly generous standard of *Julliard School*, there are no eligible voters.

In fact, as far as WTI is aware, there would not be any eligible voters here under any eligibility formula that has ever been applied. See DIC Entertainment, L.P., 328 NLRB 660 (1999) (two preductions for a minimum of five working days in the last year or at least fifteen workings days in the last year); American Zoetrope Productions, 207 NLRB 621 (1973) (two productions during the past year); Medion. Inc., 200 NLRB 1013 (1972) (two productions for five days over prior year); Davison-Paxon Co., 185 NLRB 21 (1970) (four or more hours per week for the last quarter prior to the eligibility date).

While WTI recognizes that flexibility in determining eligibility standards may be appropriate, see The Ogunquit Playhouse Foundation, Case No. 1-RC-22423, (Mar. 11, 2010), it would not effectuate the purpose of the Act to create a fictional workforce to elect a union to



negotiate a collective bargaining agreement for an as yet unhired work force. The petition should be dismissed because there are no eligible voters, regardless of which formula is applied.

3. There is yet another reason why the Region should dismiss the petition. The petitioned-for unit — musicians employed by WTI at Wang Theatre — is not an appropriate unit. Productive bargaining would require the involvement of the **multiple** third-party producers who decide whether to hire local musicians. And it has always been the law that such multiemployer bargaining cannot be imposed absent consent of the separate independent producers. See Sturgis, Inc., 331 NLRB 1298 (2000).

Critically, if certified, the primary goal of the Union would not be to bargain over terms and conditions of employment that are controlled by WTI. WTI already pays union scale, and collective bargaining is far more likely to result in a decrease than an increase.

Rather, the Union seeks to bargain over terms and conditions that are set by the various independent producers. The Union has made clear that its main concern is whether local or non-local musicians are used. But that judgment is entirely within the purview of the producers. The producer, not WTL decides whether to use their own traveling musicians or obtain local musicians through WTL. As the Board has recently made it abundantly clear, bargaining belongs in the hands of those who decide terms and conditions of employment. *Browning-Ferris Indus. of California, Inc.*, 362 NLSB No. 186 (Aug. 27, 2015); here, the producers.

Moreover, those third-party producers, in many cases, have CBAs that inform their use of musicians. Thus, bargaining over these issues would also require the involvement of the union representing those musicians directly employed by the producers. Notably, that union is generally the Petitioner's parent International, the American Federation of Musicians. Those musicians in the producer-units have conflicting interests with Boston inusicians, especially in regards to the use of traveling or local musicians.

In sum, the Union and WTI could not independently bargain over the key issues that the Union would seek to bargain over if certified. Put differently, there will never be any "musicians" whose terms and conditions of employment are solely controlled by WTI, and, therefore, a unit could not be appropriate for this individual employer.

Nor can a "joint employer" theory justify the election sought by the Union. To the contrary, if the producers and WTl are joint employers, then the Union would have to petition for separate units for each producer. That is the law not only under *Oakwood Care Center*, 343 NLRB 659 (2004), but also under *Sturgis*, *Inc.*, 331 NLRB 1298 (2000). A joint-employer unit cannot include multiple "user employers" absent consent of the separate user employers. *Sturgis*, *Inc.*, 331 NLRB 1298, 1305 (2000); *see also Greenhoot*, 205 NLRB 250 (1973) (petitioned-for unit of supplier employer's employees who were assigned to work in 14 separate office buildings was inappropriate multientalloyer unit, and 14 separate units were instead found appropriate).

It also bears noting that if there is a joint-employer relationship here, it is not the kind that serves to deprive the employees of their voice. WTI controls wages and benefits. Musicians are paid



pursuant to the wage scale published by the Petitioner. Other terms and conditions are controlled by the independent producers. Those producers, in many cases, have musician CBAs.

4. Thus, for two critical reasons, the cases on which the Union will likely rely—Kansas City Repertory Theatre, and Ogunquit Playhouse—are distinguishable. First, in both those cases, the employer produced the shows for which musicians were hired. Thus, unlike here, in those cases the employers and the petitioners could themselves bargain over the critical issues.

Second, in both those cases, the employer had employed musicians within the prior year. In Kansas City Reparatory Theatre, the employer had hired musicians for two musicals in just the prior four months. 356 NLRB No. 28, at *5-6 (Nov. 16. 2010). In Ogunquit Playhouse, the employer had hired fourteen musicians in each of the prior two seasons. Those musicians worked between one and five shows a season, with each show running for up to five weeks. The Ogunquit Playhouse Foundation, Case No. 1-RC-22423, at 19 (Mar. 11, 2010).

Conclusion

The Region should dismiss the petition without holding an election. There are no employees with the requisite "continuing interest"; there are no eligible voters under any standard that has ever been applied; and there is no appropriate bargaining unit of musicians employed solely only by WTI.

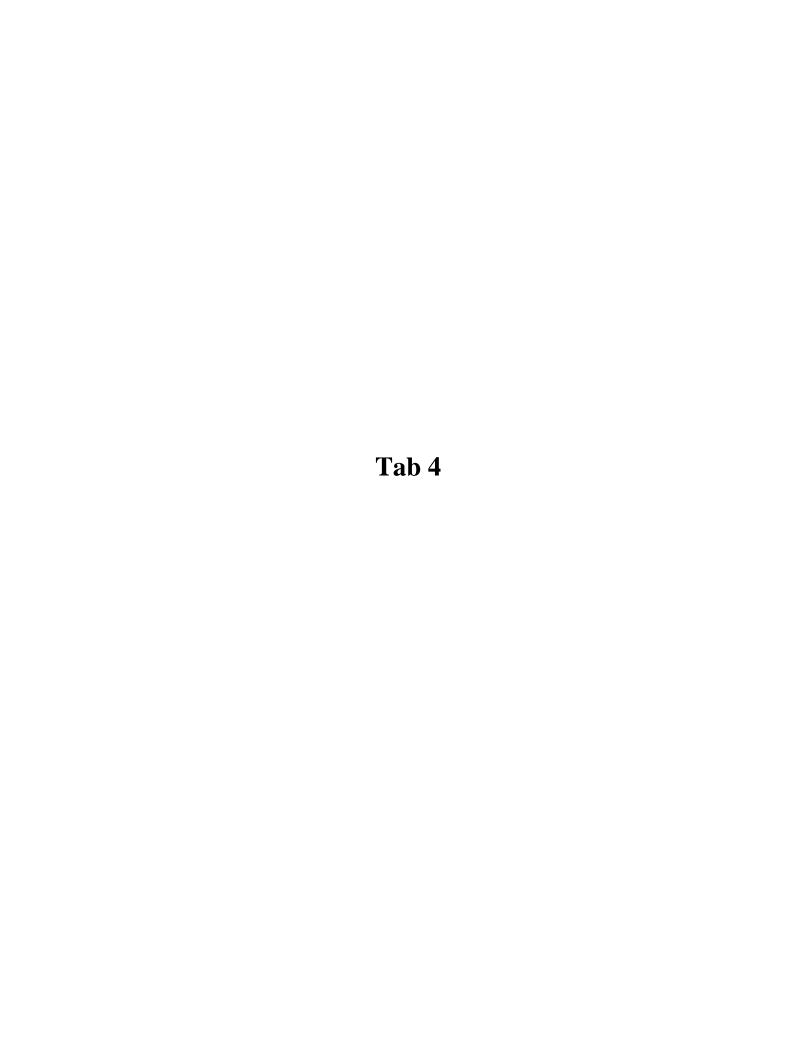
Very truly yours,

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BEFORE THE

NATIONAL LABOR RELATIONS BOARD

In the Matter of:

THE WANG THEATRE, INC., d/b/a CITI PERFORMING ARTS CENTER,

Employer,

and

BOSTON MUSICIANS ASSOCIATION, a/w AMERICAN FEDERATION OF MUSICIANS, LOCAL UNION NO. 9-535, AFL-CIO,

Petitioner.

Case No. 01-RC-166997

The above-entitled matter came on for hearing pursuant to Notice, before HILARY BEDE, Hearing Officer, at the Thomas P. O'Neill, Jr. Federal Building, Room 690-A, 10 Causeway Street, Boston, Massachusetts, 02222, on Wednesday, January 13, 2016, at 10:00 a.m.

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1	On Behalf of the Employer:
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_	Michael Szczepkowski	22	35	59	60	
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5	B-1(a) to 1(e)	6	6
6	B-2	7	7
7	PETITIONER'S		
8	P-1	69	70
9	P-2	71	73
10			

- 1 PROCEEDINGS
- 2 (Time Noted: 10:07 a.m.)
- 3 HEARING OFFICER BEDE: On the record.
- 4 The hearing will be in order. This is a formal hearing in
- 5 the matter of the Wang Theatre, Incorporated, Case Number
- 6 01-RC-166997, before the National Labor Relations Board. The
- 7 hearing officer appearing for the National Labor Relations
- 8 Board is Hilary Bede.
- 9 All parties have been informed of the procedures at formal
- 10 hearing before the Board by service of a description of
- 11 procedures in certification and decertification cases with the
- 12 notice of hearing. Additional copies of this document have
- 13 been placed on the tables.
- 14 Will counsel please state their appearances for the
- 15 record? For the Petitioner?
- MR. DUMONT: For the Petitioner, Gabriel O. Dumont, Jr.;
- 17 Dumont, Morris, & Burke, 141 Tremont Street, Boston.
- 18 HEARING OFFICER BEDE: For the Employer?
- 19 MR. TELEGEN: I'm Arthur Telegen. This is N. Skelly
- 20 Harper. We're with Seyfarth Shaw, 2 Seaport Way -- Lane.
- MR. HARPER: Seaport East.
- MR. TELEGEN: Seaport East, Boston, Mass., 02210.
- 23 HEARING OFFICER BEDE: Is there a prospective Intervenor
- 24 in the room?
- 25 (No response.)

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- 1 HEARING OFFICER BEDE: Let the record show no response.
- 2 Are there any other appearances?
- 3 (No response.)
- 4 HEARING OFFICER BEDE: Let the record show no response.
- 5 Are there any other persons, parties, or labor
- 6 organizations in the hearing room who claim an interest in the
- 7 proceeding?
- 8 (No response.)
- 9 HEARING OFFICER BEDE: Let the record show no response.
- I now propose to receive the formal papers. They have
- 11 been marked for identification as Board Exhibit 1(a) through
- 12 1(e), inclusive, Exhibit 1(e) being an index and description of
- 13 the entire exhibit.
- 14 (Board's B-1(a) to 1(e) identified.)
- 15 HEARING OFFICER BEDE: The exhibit has been shown to all
- 16 parties. Are there any objections to the receipt of these
- 17 exhibits into the record?
- 18 MR. DUMONT: Petitioner has no objections.
- 19 MR. TELEGEN: No, ma'am.
- 20 HEARING OFFICER BEDE: Hearing no objections, the formal
- 21 papers are received into evidence.
- 22 (Board's B-1(a) to 1(e) received.)
- 23 HEARING OFFICER BEDE: Are there any prehearing motions,
- 24 that is, for example, motions to quash subpoenas, made by any
- 25 party that needs to be addressed at this time?

- 1 (No response.)
- 2 HEARING OFFICER BEDE: Let the record show no response.
- 3 The parties in this proceeding have executed a document
- 4 which is marked as Board Exhibit 2. The exhibit contains a
- 5 series of stipulations, including among other items that the
- 6 Petitioner is a labor organization within the meaning of the
- 7 Act and that there is no contract bar.
- 8 (Board's B-2 identified.)
- 9 HEARING OFFICER BEDE: Are there any objections to the
- 10 receipt of Board Exhibit 2?
- 11 MR. DUMONT: No objections.
- MR. TELEGEN: No, ma'am.
- 13 HEARING OFFICER BEDE: Hearing no objection, Board
- 14 Exhibit 2 is received into evidence.
- 15 (Board's B-2 received.)
- 16 HEARING OFFICER BEDE: It is my understanding that there
- 17 is a past collective bargaining relationship between the
- 18 parties that spans several decades. The most recent collective
- 19 bargaining agreement was effective between September 2004 and
- 20 September 2007, and is included as part of Board Exhibit 1 as
- 21 Exhibit A to the Employer's statement of position. Mr.
- 22 Telegen, is that correct?
- MR. TELEGEN: That's correct. My understanding is that
- 24 that contract was extended until December 31, 2007.
- 25 HEARING OFFICER BEDE: All right. Mr. Dumont, is that

- 1 correct, to your knowledge?
- 2 MR. DUMONT: That is the only -- that is the last contract
- 3 that was ratified. We had a relationship that continued. We
- 4 had a tentative agreement that was negotiated but was not
- 5 ratified that would have gone through September 2010.
- 6 HEARING OFFICER BEDE: All right, thank you. Is anyone --
- 7 MR. TELEGEN: I'm not sure what the status of that last
- 8 point is, but there is evidence to be given on what happened
- 9 after December 2007, there should be.
- 10 HEARING OFFICER BEDE: All right. But we do have just as
- 11 background there was a collective bargaining relationship,
- 12 somewhat lapsed over time, and there is no current collective
- 13 bargaining agreement, although there were some in the past.
- MR. DUMONT: Correct.
- 15 MR. TELEGEN: Except for the word somewhat, yes.
- 16 HEARING OFFICER BEDE: Okay. Are there any petitions
- 17 pending in other regional offices involving other facilities of
- 18 the Employer?
- 19 MR. TELEGEN: Not that I'm aware of.
- 20 HEARING OFFICER BEDE: The parties are reminded that prior
- 21 to the close of the hearing, the hearing officer will solicit
- 22 the parties' positions on the type, date, time, and location of
- 23 the election, and the eligibility period, including the most
- 24 recent payroll period ending date and any applicable
- 25 eligibility formula, but will not permit litigation of those

- 1 issues.
- 2 The hearing officer will also inquire as to the need for
- 3 foreign language ballots and notices of election. Please have
- 4 the relevant information with respect to those issues
- 5 available, at this time. And while I am reading a form letter,
- 6 I will point out that while there was a reference to
- 7 eligibility formulas not being litigated, we obviously are
- 8 going to litigate that, talk about that quite a bit, today.
- 9 The parties have been advised that the hearing will
- 10 continue from day to day as necessary until completed, unless
- 11 the regional director concludes that extraordinary
- 12 circumstances warrant otherwise.
- The parties are also advised that upon request they shall
- 14 be entitled to a reasonable period at the close of the hearing
- 15 for oral argument. Post-hearing briefs shall be filed only
- 16 upon special permission of the regional director. In addition,
- 17 a party may offer into evidence a brief memo of points and
- 18 authorities, case citations, or other legal arguments during
- 19 the course of the hearing and before the hearing closes.
- The Employer has completed, and was included as Board
- 21 Exhibit 1(b), a statement of position in this matter. Among
- 22 the issues raised by the statement of position are that the
- 23 petition should be dismissed as the Employer has not employed a
- 24 single musician for over a year. Is that correct, Mr. Telegen?
- 25 MR. TELEGEN: That is correct.

- 1 HEARING OFFICER BEDE: The statement of position also
- 2 raises the issue that any possible eligibility formula would
- 3 leave no employees eligible to vote in an election. Is that
- 4 correct?
- 5 MR. TELEGEN: I think I would not say possible. Any
- 6 recognized eligibility formula that the Board has ever adopted.
- 7 HEARING OFFICER BEDE: What eligibility formula are you
- 8 suggesting would be appropriate and which shows that there
- 9 would be no employees eligible to vote?
- 10 MR. TELEGEN: At minimum, any eligibility formula which
- 11 would be acceptable would include employees employed within the
- 12 last year. There are no employees employed within the last
- 13 year. There is no such eligibility formula.
- 14 HEARING OFFICER BEDE: All right. And your position
- 15 statement also made note of you suggested that, and I'm not
- 16 trying to restate your position statement, so please correct me
- 17 if I'm wrong, that Julliard said that -- the Julliard case said
- 18 that 120 hours in the last 2 years would be the broadest, most
- 19 inclusive possible formula and that no musicians meet that
- 20 formula. Is that correct?
- 21 MR. TELEGEN: That is also correct, though Julliard,
- 22 itself, included in every reported case where there has been a
- 23 certification of the bargaining unit, it has included employees
- 24 that worked within a year.
- 25 HEARING OFFICER BEDE: All right. Also noted within the

- 1 Employer's position statement is the argument that the petition
- 2 should be dismissed because bargaining would include multiple
- 3 third party independent producers. Is that correct?
- 4 MR. TELEGEN: Yes.
- 5 HEARING OFFICER BEDE: Are there any other particular
- 6 arguments in your statement of position that I have missed?
- 7 MR. TELEGEN: The last point may be broader than you
- 8 stated it. The Union, as we understand it, seeks to bargain
- 9 over such matters as minimum number of musicians to be hired
- 10 for particular performances and whether musicians should be
- 11 hired for particular performances, for example, recorded music
- 12 or other sources of employees.
- In fact, the Employer as alleged in this case is
- 14 essentially a hiring agent on rare occasion for productions
- 15 that are on Wang Theatre. If this were in any other context,
- 16 the Board would conclude that the Wang is not even an employer,
- 17 on the joint employer issue. It is not an employer. All the
- 18 terms and conditions of employment are essentially controlled
- 19 by the producer.
- 20 At minimum, it's joint employer, at best it's a joint
- 21 employer, and what's critical here is the issues that seem to
- 22 have motivated the Union to file a petition in the first place
- 23 are matters over which Wang has no control. Under traditional
- 24 Board law and certainly under more recent Board law, they
- 25 should be negotiating, if with anybody, with the people who

- 1 control the terms and conditions of employment of the people
- 2 who are, we assume, the theoretical represented employees,
- 3 although, of course, there are no employees to be represented
- 4 at the moment. It's speculative as to when and where they
- 5 would be.
- I will say, Madam Hearing Officer, that this really
- 7 warrants a bit more lengthy exposition and it warrants the
- 8 parties understanding each other position in a more meaningful
- 9 way to assist the regional director in coming to a reasoned and
- 10 deliberate conclusion, and briefs would be a useful thing in
- 11 this case. Apparently --
- 12 HEARING OFFICER BEDE: All right, we will discuss the
- 13 matter of briefs at the end of the hearing.
- 14 MR. TELEGEN: I want to say also there is no time issue
- 15 here. So, I mean, we haven't had by any -- under any
- 16 circumstances an employee in the last 14 months, so presumably
- 17 there aren't employees who are there waiting to have their
- 18 terms and conditions of employment bargained.
- 19 HEARING OFFICER BEDE: We have discussed the matter of
- 20 briefs off the record. We have now discussed the matter of the
- 21 briefs on the record. It's still a decision that's not going
- 22 to be made until we finish the hearing.
- 23 Mr. Dumont, as the first point that Mr. Telegen just
- 24 discussed was that the petition should be dismissed because the
- 25 Employer has not employed a musician for over a year. Does the

- 1 Petitioner have any position on that?
- 2 MR. DUMONT: Yes, we do. I think that the -- our position
- 3 is that the Employer in this case is in the current season. In
- 4 the theater for the Wang and actually for all theaters
- 5 certainly around that I'm familiar with, their seasons are not
- 6 based on a calendar year. Their seasons overlap. So we are
- 7 currently in the 2015-2016 season. And we will introduce
- 8 evidence from the Wang's own web site that identifies that. So
- 9 while we would agree that it has been slightly more than a year
- 10 since the Wang has employed musician, employment of those
- 11 musicians was in the last season.
- 12 Contrary to my brother, I do not see in the case that we
- 13 litigated in Ogunquit, for example, there was no hours
- 14 requirement. I also do not believe in what is the most
- 15 relevant decision, which I previously cited but I'll just leave
- 16 that for later, which is a theater, musicals, single production
- 17 per year, one would look at that decision, including the
- 18 relevant part of the regional director's decision and you would
- 19 look for a long time before you would find any hour
- 20 requirement. The requirement is the number of days worked.
- 21 And as it was in Ogunquit, you could -- or as in that case,
- 22 those were tradition musical performances were people are
- 23 working a relatively, you know, three, three and a half hours
- 24 for each day.
- 25 So our first point on this is that under the Kansas City

- 1 Repertory Theater case and under the Ogunquit case, and
- 2 Ogunquit was the DD&E issued, I believe, in March of 2010, that
- 3 was in between their season because Ogunquit is under Star
- 4 Theater (ph.). And I believe, if I recall, the eligibility
- 5 standard was two shows, at least one of which had to be in the
- 6 2009 season, which was the preceding season.
- We are in -- we are currently, as I say, we are currently
- 8 in the 2015-2016 season. We've had any number of people who
- 9 would qualify, who worked in December. In addition to that, we
- 10 would note and, quite frankly, it's something I just discovered
- 11 yesterday afternoon so I haven't parched through whether it
- 12 will deem to be relevant in an RC case or not, but what we have
- 13 learned is that something unique happened relative to the Elf
- 14 production, which was in November of 2015. That is for the
- 15 first time we'll have evidence to this effect to the extent it
- 16 is allowed in this particular forum, for the first time, to the
- 17 best of AFM's knowledge nationally, when Rule 24 was invoked
- 18 and local musicians were hired for Elf, they were not hired on
- 19 the Wang payroll. They were hired on the producer's payroll
- 20 and then Wang reimbursed them.
- 21 And so I understand that doesn't make them the Wang
- 22 employees, but what happened in this situation is knowledge
- 23 that we were organizing and something that is absolutely unique
- 24 for time and memorial happened, so that created a situation
- 25 where our people were not technically the Wang employees, even

- 1 though the Wang reimbursed the producer for the cost of those
- 2 employees. So we're in uncharted territory. And I only
- 3 discovered this yesterday afternoon when I was going through
- 4 that rather large group of documents that is what
- 5 transpired. Technically, local musicians were hired. They
- 6 were instead of being put on the Wang payroll, they were put on
- 7 the payroll of the producer. And the Wang reimbursed for that
- 8 cost. So I don't know where that takes us, but that's the
- 9 response on the eligibility issue.
- 10 HEARING OFFICER BEDE: All right, I think you responded to
- 11 all the points that I had raised without prompting, so I think
- 12 that we --
- MR. DUMONT: Except the last one. I haven't responded to
- 14 that, I don't believe.
- 15 HEARING OFFICER BEDE: I think you touched on it by saying
- 16 that some of the employees were -- that in the past, musicians
- 17 have been hired directly by the Wang and with the musical Elf,
- 18 there had been a different format used. But if you have any
- 19 further comment to make on the matter of the necessity of
- 20 bargaining with different producers, then please comment on
- 21 that as well.
- 22 MR. DUMONT: I will, because there is probably evidence
- 23 will go in. If you look in that group of documents, you'll see
- 24 the last ratified collective bargaining agreement. If you look
- 25 at that agreement, you will see that Article 4 talks about the

- 1 staffing, and refers to the number of local musicians and the
- 2 circumstances in which local musicians will be hired and will
- 3 be governed by the terms of the collective bargaining
- 4 agreement. You'll see there is a reference to what is called
- 5 the Pamphlet B agreement.
- The Pamphlet B agreement, to my knowledge, has been around
- 7 since probably at least in the '80s and maybe earlier than
- 8 that. We had at the Wang a series of collective bargaining
- 9 agreements that we entered into and governed the relationship,
- 10 and the circumstances that are absolutely identical to the
- 11 circumstances today. And let me explain, count this as an
- 12 opening if you want, but just by virtue of directing, or
- 13 narrowing, or focusing the presentation.
- 14 Using any of the three shows that the record now contains,
- 15 the agreement between the Wang and the producer, all three of
- 16 those shows, when they came to -- when they went on the tour
- 17 were AFM Union shows. The AFM's collective bargaining
- 18 agreements with touring producers are referred to as
- 19 Pamphlet B. And not all tours come out, from an AFM
- 20 perspective, come out as union tours. Probably, when we're
- 21 talking about musicals, probably a substantial majority do come
- 22 out under the AFM Pamphlet B, but there are some that come out
- 23 non-union.
- Under the Pamphlet B, when an employer such as NETworks,
- 25 and NETworks was producer for Elf. When companies like

- 1 NETworks bring a show on tour, they're the actual company.
- 2 They create an LLC. It's just specific to that tour, I'm sure
- 3 for legal and liability issues, but that's what they do. But
- 4 it's NETworks' presentations.
- 5 So the producer executes a contract, collective bargaining
- 6 agreement, with the AFM. Within that collective bargaining
- 7 agreement is Rule 24, which says that when the tour comes to a
- 8 Rule 24 city, and Boston is a Rule 24 city, it is required to
- 9 lay off and hire local musicians by a particular formula. It's
- 10 based principally on the duration of the show. And that has
- 11 been in existence for decades.
- 12 These shows continue, such as Elf, continue to come out
- 13 under an AFM agreement. If we have a collective bargaining
- 14 agreement such as we currently used to have, what would happen
- 15 is Elf would lay off a number of its touring musicians and the
- 16 venue would hire local musicians and apply that collective
- 17 bargaining agreement. That existed in the last collective
- 18 bargaining agreement. Not a thing has changed, so there is no
- 19 issue of who sits at the table.
- 20 The producer gives up its right to control the terms and
- 21 conditions of the collective bargaining agreement, of terms and
- 22 conditions of the local musician when it executes an AMF
- 23 agreement.
- The second point would be in circumstances where they come
- 25 out in non-union shows, we will introduce the collective

- 1 bargaining agreement with the Opera House, and that has a
- 2 provision which says that if a non-union show comes, they have
- 3 to lay off 50 percent, and that is an obligation that the venue
- 4 imposes on a non-union producer so that the collective
- 5 bargaining agreement that we have at the Opera House currently
- 6 in place, all 20 pages of it, all the terms and conditions
- 7 apply to 50 percent -- at least 50 percent of the musicians
- 8 when the non-union show comes and presents at the Opera House,
- 9 which one just very recently did in the last few weeks.
- 10 So there is no issue whatsoever in terms of the Wang
- 11 Theatre being able to negotiate a collective bargaining
- 12 agreement. Nothing has changed since 2007.
- 13 HEARING OFFICER BEDE: All right.
- 14 MR. TELEGEN: Madam Hearing Officer, if I may, I have
- 15 enormous respect for my brother and I'm always glad to be
- 16 educated about the history of the collective bargaining and the
- 17 musical industry, but I just want to remind you that this is an
- 18 opening statement. To the extent that we're hearing about
- 19 rules and collective bargaining agreements, other things that
- 20 he argues pertain to this seating, we need evidence. And
- 21 Rule 24 is not in front of you and also probably doesn't trump
- 22 the National Labor Relations Act, in any event, which is why
- 23 we're out here, today. But I'm hoping someone will testify not
- 24 verbally about the contents of your listings when there is a
- 25 witness, but documents that will either pertain or not pertain.

- 1 Worth also saying the 2007 collective bargaining
- 2 agreement, the contract expired in 2007, that was not renewed
- 3 by the parties presumably voluntarily on both sides. It's
- 4 probably the last thing that should control what we're about
- 5 because that's an agreement the parties chose not to renew.
- 6 Thank you.
- 7 MR. DUMONT: We will be putting in evidence. But I would
- 8 note if you check Addendum G to the last collective bargaining
- 9 agreement, which was introduced by my brother, you will see
- 10 Rule 24. And I have with me Mr. Mark Pinto, who is the
- 11 secretary/treasurer of the Theater Musicians Association, which
- 12 is a conference within the AFM. He is also the
- 13 secretary/treasurer of the Boston Musicians Association. He
- 14 would be able to give us live explanations of how it works in
- 15 the theatrical.
- 16 HEARING OFFICER BEDE: All right, I think that we're all
- 17 in agreement that we should move along from summarizing to
- 18 presenting some real evidence. I think we understand what the
- 19 issues to be litigated are here. So, Mr. Telegen, if you would
- 20 like to present your first witness, I think we can do that now.
- 21 MR. TELEGEN: If I understand the Union's position, and
- 22 I'm sorry to keep talking, but I want to be clear where we are.
- 23 If I understand the Union's position, anybody whoever, starting
- 24 with the -- during the history of the Wang Theatre is in the
- 25 bargaining unit, is entitled to vote. Do I correctly

- 1 understand it?
- 2 HEARING OFFICER BEDE: Mr. Dumont, is that the Union's
- 3 position?
- 4 MR. DUMONT: I don't believe that I stated that to be my
- 5 position. I believe that should be as in the decisions that I
- 6 cited, which was 15 in 2 years, as it was in the Kansas City
- 7 case and as it was in Ogunquit.
- 8 HEARING OFFICER BEDE: And by my count, that's about five
- 9 people who played in both of those 2014 productions. So the
- 10 Petitioner's position is that those five people would be
- 11 eligible to vote.
- 12 MR. DUMONT: Correct.
- 13 HEARING OFFICER BEDE: All right. Would you like to call
- 14 your first witness?
- 15 MR. TELEGEN: And they are members of the bargaining unit,
- 16 just so we're clear, they're the people whom the Union seeks to
- 17 represent?
- 18 HEARING OFFICER BEDE: I think that that is --
- 19 MR. DUMONT: No, this is something totally different.
- 20 That's the eligibility. I thought that's what you -- we're
- 21 seeking to represent the bargaining unit that would be the
- 22 casual employees who are musicians, who play in the future.
- 23 The people who are eligible to vote may or may not, in the
- 24 situation where the unit is made up exclusively of casual
- 25 employees, which exists in every position, you may in fact have

- 1 people who vote, who don't. But in this particular case, our
- 2 evidence will be that there is a core that regularly work every
- 3 show.
- 4 HEARING OFFICER BEDE: All right. Is that acceptable?
- 5 MR. TELEGEN: No. But I mean it's what he said.
- 6 HEARING OFFICER BEDE: Well, not acceptable as in you
- 7 agree to it; acceptable as in you understanding what he is
- 8 saying.
- 9 MR. TELEGEN: I heard the words.
- 10 HEARING OFFICER BEDE: All right, you heard the words.
- 11 Would you like to call a witness now?
- 12 MR. TELEGEN: Yes.
- 13 HEARING OFFICER BEDE: All right, thank you. Please do
- 14 so.
- 15 (Pause.)
- 16 HEARING OFFICER BEDE: Please raise your right hand.
- 17 (Whereupon,
- 18 MICHAEL SZCZEPKOWSKI,
- 19 was called as a witness by and on behalf of the Employer and,
- 20 after having been duly sworn, was examined and testified as
- 21 follows:)
- 22 HEARING OFFICER BEDE: Please take a seat. And please
- 23 state your name and spell it for the record.
- THE WITNESS: Yes, for sure. My name is Michael
- 25 Szczepkowski. It's S-Z-C-Z-E-P-K-O-W-S-K-I.

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- 1 MR. TELEGEN: Would you please spell Michael?
- 2 DIRECT EXAMINATION
- 3 BY MR. TELEGEN:
- 4 Q By whom are you employed?
- 5 A City Performing Arts, Inc. (ph.).
- 6 Q Who does the Wang Theatre, Inc., relate to that entity?
- 7 A Wang Theatre, Inc., is a not-for-profit company that
- 8 operates the Wang Theatre under a long-term lease arrangement.
- 9 Q What other entities comprise the Wang Performing Arts
- 10 Center?
- 11 A We also operate the Shubert Theatre under a not-for-profit
- 12 company called Tremont Theatre, Inc.
- 13 Q And Tremont Theatre, Inc., and Wang Theatre, Inc., are
- 14 separate corporations?
- 15 A They are.
- 16 Q Just so were clear, I'm going to ask you whether various
- 17 entities produced other entities. And so our glossary for this
- 18 hearing is clear, what's your understanding of the word
- 19 produce?
- 20 A A company that produces maintains artistic control over a
- 21 production, besides the elements of production that is out on
- 22 the road or that's going to be traveling into various
- 23 performing centers.
- 24 Q Has Wang Theatre ever produced a show?
- 25 A No.

- 1 Q Who produces the shows -- I take it things, productions do
- 2 appear at the Wang, is that correct?
- 3 A Productions appear at the Wang.
- 4 Q Who produces the productions that appear at the Wang?
- 5 A Independent producers, independent -- various companies.
- 6 NETworks is one of them. There are many different producers,
- 7 whether it be star attractions or touring musicals.
- 8 Q Again so our glossary is good, what is a star attraction?
- 9 A A star attraction would be something like Van Morrison
- 10 playing at the theater or Josh Groban, or anything along those
- 11 lines, a known musical act, musical star.
- 12 Q In other words, a name that the public might be attracted
- 13 to come and see?
- 14 A Correct.
- 15 Q And pay to come and see?
- 16 A Correct.
- 17 O What is a musical?
- 18 A A recognized touring, Broadway theatrical, musical
- 19 theatrical production.
- 20 Q Give the hearing officer an example.
- 21 A Annie, White Christmas, Elf.
- 22 Q You just testified, I believe, the producer of those
- 23 various productions may vary from production to production?
- 24 A Would vary from production to production.
- 25 Q How long have you been employed?

- 1 A I am going into my 20th year, 19 1/2 years.
- 2 Q In your experience, how many productions out of each year
- 3 are at the Wang Theatre?
- 4 A We do probably 20 to 25 currently.
- 5 Q Do you recall how many there were in 2015?
- 6 A Something in that range. I don't remember the exact
- 7 number.
- 8 MR. TELEGEN: Madam Hearing Officer, attached as Exhibit D
- 9 to the position statement we filed is a list. I'm going to
- 10 show it to authenticate it.
- 11 HEARING OFFICER BEDE: All right.
- 12 BY MR. TELEGEN:
- 13 Q Could you tell the hearing officer what's Exhibit D?
- 14 A This is a list of shows that took place from January 2014
- 15 through the end of December 2015.
- 16 Q That document has at the top shows that did not require
- 17 local musicians, is that accurate, those shows listed there did
- 18 not have local musicians?
- 19 A That's correct.
- 20 Q And what's below are the three shows -- two shows in 2014
- 21 that did have local musicians?
- 22 A That's correct.
- 23 Q When there is a production to be scheduled at the Wang,
- 24 what's the Wang Theatre's role in relationship to the
- 25 production?

- 1 A The Wang Theatre can either be rented by a producer or
- 2 another promoter to present the show, or the Wang Theatre can
- 3 undertake to promote the show, itself.
- 4 Q When the producer rents the Wang, what does that mean?
- 5 A When the producer rents the Wang Theatre, they receive all
- 6 of the ticket proceeds from the show. They are fully
- 7 responsible for all of the expenses of the show. The Wang
- 8 Theatre will provide assistance when requested by a producer,
- 9 but the responsibility for everything falls on the producer.
- 10 Q Putting musicians aside, the Wang Theatre has employees,
- 11 is that correct?
- 12 A That's correct.
- 13 Q Some of those employees work during a production?
- 14 A That's correct.
- 15 Q Which employees -- can you describe the categories of
- 16 employees that that entails?
- 17 A The Wang Theatre has house managers. Wang Theatre has box
- 18 office employees. The Wang Theatre has stagehands, wardrobe
- 19 employees.
- 20 Q Are they employed pursuant to collective bargaining
- 21 agreements?
- 22 A Some of them are.
- 23 Q Are those employees supervised by employees of the Wang?
- 24 A They are.
- 25 Q Describe the differences that occur when the Wang Theatre

- 1 is the promoter of the show, as opposed to simply renting the
- 2 hall.
- 3 A The difference is that the Wang Theatre has more of a
- 4 financial risk in the outcome of the show. We negotiate an
- 5 arrangement with the show, with the producer, for certain terms
- 6 of what we will pay the producer financially. We typically
- 7 will then handle the marketing of the show and provide other
- 8 services needed for the show. Those are then, from the ticket
- 9 proceeds, those expenses are reimbursed first to pay for the
- 10 show and then to pay for the other expenses. And any monies
- 11 left over are then split. Again, based on the financial
- 12 arrangements with the show, there would be some type of a
- 13 financial split with the producer.
- 14 Q I want you to turn your attention to the people who
- 15 actually produce the music at the Wang Theatre when there is a
- 16 production. Who hires the people who play instruments and sing
- 17 at the Wang?
- 18 A Typically, those come with the producer.
- 19 Q For a star attraction, who is on stage?
- 20 A Obviously, the star, and whatever supporting musicians
- 21 travel with them, their orchestra.
- 22 Q Addressing your attention to say the last two years, who
- 23 has hired the supporting musicians?
- 24 A The producer.
- 25 Q With respect to the musicals, who hires the musicians --

- 1 well, first of all, who hires the performers of the musical,
- 2 the singers and the dancers that are part of the show?
- 3 A The producer of that particular show.
- 4 Q Sometimes there is a supporting orchestra, is that
- 5 correct?
- 6 A That's correct.
- 7 Q Who hires the people who play in the orchestra?
- 8 A Normally, the producer hires the orchestra. And
- 9 occasionally they will ask to have additional local people
- 10 provided for them.
- 11 Q With respect to the orchestra, is it all one or all the
- 12 other, all travelers versus all --
- 13 A There's been cases of both.
- 14 O It's a mix of the orchestra?
- 15 A Correct.
- 16 Q Who decides whether the people in the orchestra will be
- 17 traveling with the show versus hired locally?
- 18 A The producer.
- 19 Q If the producer decides that the musicians will be hired
- 20 locally, what are the alternatives that could occur in terms of
- 21 obtaining the musicians?
- 22 A They could hire them, themselves, or they could request
- 23 that we provide them assistance in hiring he musicians.
- 24 Q If they request that you provide assistance, what do you
- 25 do?

- 1 A We have a contractor that we work with, that we've worked
- 2 with for many years, and that contractor then will go and find
- 3 the musicians that are being requested by the producer and
- 4 bring them to the show.
- 5 Q Again, let's get a glossary here. When you say
- 6 contractor, do you mean an agent hired by you?
- 7 A An individual that works, yes, to hire the musicians.
- 8 Q And he or she would find musicians, source musicians to
- 9 fit the needs of the show?
- 10 A That's correct.
- 11 O Who decides what the needs of the show are?
- 12 A The producer.
- 13 Q So the agent doesn't go out and say I think the show needs
- 14 a timpani, we're going to get a timpani player?
- 15 A No.
- 16 Q There's a list of what instruments are necessary?
- 17 A Correct.
- 18 Q Over the course of the last several years, do the rates of
- 19 pay get negotiated by the agent directly with the musicians?
- 20 A Over the last several years, we have been using a standard
- 21 rate card provided by the union, by the Boston Musicians
- 22 Association.
- 23 Q That's been universal?
- 24 A Yes.
- 25 Q We've been assuming that the productions require live

- 1 music. Are there occasions when there is music but it's not
- 2 live?
- 3 A There are productions that have traveled, Radio City
- 4 Christmas Spectacular is an example of one. There are some
- 5 dance companies that come into the theater, such as Alvin
- 6 Ailey, that do not use live music.
- 7 Q Alvin Ailey is a dance troop, is that right?
- 8 A That's correct.
- 9 Q I just want to make sure the hearing officer is familiar.
- 10 A Yes.
- 11 Q Who decides whether to use recorded music or live music?
- 12 A The producer.
- 13 O Does the orchestra have a conductor?
- 14 A Yes.
- 15 Q Typically?
- 16 A Typically. You're talking about for a Broadway show?
- 17 O Yes.
- 18 A For a Broadway show, yes.
- 19 Q And the conductor tells -- who decides what music can be
- 20 played?
- 21 A Who decides?
- 22 Q What music is going to be played.
- 23 A The producer.
- 24 Q They just don't get off and decide to play their own songs
- 25 during the course of the show, okay. And who conducts the

- 1 music?
- 2 A The conductor that comes with the show.
- 3 Q He or she is an employee of the producer?
- 4 A The producer.
- 5 MR. TELEGEN: Madam Hearing Officer, there is a collective
- 6 bargaining agreement that both parties have identified as being
- 7 in the record.
- 8 HEARING OFFICER BEDE: Yes.
- 9 MR. TELEGEN: You don't need me to have that
- 10 authenticated, is that correct?
- 11 HEARING OFFICER BEDE: That's correct.
- MR. TELEGEN: And there is a wage sheet that's also
- 13 attached there. I assume there is no disagreement that really
- 14 is the wage sheet that's used. Is that fair, Gabe?
- MR. DUMONT: Yes, that's fair.
- 16 HEARING OFFICER BEDE: All right.
- 17 BY MR. TELEGEN:
- 18 Q The hearing officer heard discussion about an agreement
- 19 that was in fact through 2007. Did the Wang want to negotiate
- 20 a new agreement? Did it want a successor agreement?
- 21 A The Wang talked with the Boston Musicians Association, but
- 22 I would have to say we reached a point where I think we felt
- 23 that we could not bargain over things that we didn't control.
- 24 Q What things were those that you couldn't control or you
- 25 didn't want to bargain over?

- 1 A Whether there were live musicians, whether the number of
- 2 musicians to be employed.
- 3 Q Was there ever an agreement reached?
- 4 A No.
- 5 Q In 2015, is it correct that there were no musicians
- 6 employed by the Wang Theatre, is that correct?
- 7 A That's correct.
- 8 Q And in 2014, how many shows had live musicians that were
- 9 hired by the Wang?
- 10 A We provided musicians for two shows, for Annie and for
- 11 White Christmas.
- 12 Q Did the Wang's agent source all the musicians for those
- 13 shows?
- 14 A Just the number requested by the producer.
- 15 Q And if you recall, do you recall how many for each?
- 16 A I believe Annie was eight musicians were provided by the
- 17 Wang and five traveled with the show.
- 18 Q Okay, let's stop there for the moment. If you were
- 19 attending an Annie performance and you could see into the
- 20 orchestra pit, could you distinguish which of the musicians
- 21 were hired by the Wang and which musicians were hired by the
- 22 producer?
- 23 A No.
- 24 Q Were they supervised in the same way?
- 25 A Yes.

- 1 Q Do they have the same hours?
- 2 A To the best of my knowledge, yes.
- 3 Q The same rehearsals?
- 4 A Yes.
- 5 Q Did they all answer to the same conductor?
- 6 A Yes.
- 7 Q Do you recall on White Christmas what the mix was? If you
- 8 don't, that's okay.
- 9 A I believe 13 were hired in Boston and 2 traveled with the
- 10 show.
- 11 Q I'll ask you the same question. If you could see into the
- 12 orchestra pit, could you distinguish which of the musicians
- 13 were hired by the Wang versus which were hired by the producer?
- 14 A No.
- 15 Q Do they all attend the same performances?
- 16 A Yes.
- 17 Q They all play the same score?
- 18 A Yes.
- 19 Q They all answer to the same conductor?
- 20 A Yes.
- 21 Q They all attend the same rehearsals?
- 22 A To the best of my knowledge, yes.
- 23 Q Who decided how many would be hired by the Wang versus how
- 24 many would be hired by the producer?
- 25 A The producer.

- 1 MR. TELEGEN: Madam Hearing Officer, I make reference to
- 2 Exhibit E.
- 3 BY MR. TELEGEN:
- 4 Q First, in general terms, can you tell the hearing officer
- 5 what Exhibit E is?
- 6 A It's a summary of musicians and the amount of hours that
- 7 they worked in the last two years.
- 8 Q Can you tell the hearing officer how the hours were
- 9 calculated?
- 10 A As you can see, in 2015, there were no hours worked, as
- 11 we've said. 2014 was the productions of Annie and White
- 12 Christmas. There were no more than 3 hours worked per
- 13 performance for either of those shows, 16 shows of each
- 14 performance. And I believe White Christmas had, in the first
- 15 week, a five-hour rehearsal, and Annie, I believe -- or maybe
- 16 it was vice versa, I think Annie may have had five hours and
- 17 White Christmas had four hours.
- 18 Q If you turn to the second page, that's the breakdown, is
- 19 that right?
- 20 A That's correct.
- 21 Q Just so the record is clear, the percentage add refers to
- 22 what?
- 23 A That refers to a thing called doubling where a musician
- 24 may play more than one instrument.
- 25 Q So if you look at Mr. Pinto, for example, he got a 50

- 1 percent addition because he plays multiple instruments?
- 2 A I believe that that's correct.
- 3 MR. TELEGEN: Madam Hearing Officer, unless you have any
- 4 further questions about that document?
- 5 HEARING OFFICER BEDE: I don't believe so, no.
- 6 BY MR. TELEGEN:
- 7 Q Since Elf has been in discussion here today, first of all,
- 8 what is Elf, in case anyone in the room doesn't know?
- 9 A Elf was a musical that played at the Wang Theatre this
- 10 past December.
- 11 O Were there musicians?
- 12 A There were.
- 13 Q Who hired the musicians?
- 14 A The producer.
- 15 Q Who decided who would hire the musicians?
- 16 A The producer.
- 17 Q Do you recall how many there were?
- 18 A I believe there were a total of eight musicians.
- 19 Q Did you have any contract with anybody, or any agreements
- 20 with anybody, or any undertaking with anybody that disabled you
- 21 from agreeing to the producer's bringing its -- hiring its own
- 22 musicians?
- 23 A No.
- 24 Q Do you know whether the producer of Elf has a collective
- 25 bargaining agreement with any musicians union?

- 1 A I don't know for a fact.
- 2 Q Would there be any shows in -- currently scheduled in 2016
- 3 that would require live music?
- 4 A We are under discussion. We are not fully contracted yet,
- 5 so the terms have not been agreed to. We have Wizard of Oz
- 6 coming in, in April, but the contract for the show is not
- 7 completed yet and, therefore, our terms of what they may or may
- 8 not be asking us to provide are not set.
- 9 Q And just so the record is clear, that's different than The
- 10 Wiz?
- 11 A That's different.
- 12 Q More true to the original story.
- MR. TELEGEN: No further questions.
- 14 HEARING OFFICER BEDE: Would you like to cross-examine the
- 15 witness?
- 16 MR. DUMONT: I would love to.
- 17 CROSS-EXAMINATION
- 18 BY MR. DUMONT:
- 19 Q All right, where should we begin. You said you've been
- 20 with the Wang for 19 years or so, is that correct?
- 21 A That's correct.
- 22 Q Did you have any involvement with the Boston Musicians
- 23 Association's collective bargaining agreement the last which
- 24 extended through to 2008?
- 25 A In terms of the negotiation?

- 1 Q Let's start there, in terms of the negotiations, did you
- 2 participate at all in any of the bargaining sessions?
- 3 A I believe I was involved in sessions, certainly I believe
- 4 when we signed the extension.
- 5 Q Were you familiar -- are you familiar sort of generally
- 6 with the terms and conditions that were in the 2003-2007
- 7 collective bargaining agreement that was extended for one year.
- 8 A Somewhat, somewhat.
- 9 Q Now I believe in answer to your counsels' questions, for
- 10 example, if I recall correctly, you said something to the
- 11 effect that the producer would control whether live music, as
- 12 opposed to recorded music, was performed or used in a musical.
- 13 Do you recall that testimony?
- 14 A That's correct.
- 15 Q That was not the case up through 2008, correct?
- 16 A I believe there was a clause in the agreement that
- 17 prevented us from using a show.
- 18 Q And in that 2003-2007 agreement that was extended to 2008,
- 19 there was a side letter, do you recall that, that was executed
- 20 by Barbara Owens, who was the then president of the BMA?
- 21 MR. TELEGEN: I think maybe you could direct his attention
- 22 to that.
- MR. DUMONT: Okay. This is what's already there.
- 24 HEARING OFFICER BEDE: Okay.
- MR. DUMONT: I mean I didn't bring extra copies. The

- 1 document is Exhibit A to the position statement.
- 2 BY MR. DUMONT:
- 3 Q So I'm directing the witness' attention to Article 8, use
- 4 of live music. That would be the provision you would be
- 5 referring to that prohibited the use of recorded music to
- 6 displace musicians?
- 7 A That would prohibit us from using -- presenting a show,
- 8 right.
- 9 Q Just so I'm clear, and I'll get to Barbara Owens' letter,
- 10 but when your counsel was having you define terms, producer
- 11 versus promoter, versus four-wall rental situation, that was
- 12 the same back in 2003 to 2007, correct?
- 13 A Yes.
- 14 Q The Wang Theatre similarly had producers come in and they
- 15 would present -- they potentially would present as what we
- 16 refer to as a four-wall rental, which was the first description
- 17 that you had, which is they pay you for the structure. They
- 18 take all the risk. And then the other way where the Wang would
- 19 also promote. Correct?
- 20 A That's correct.
- 21 Q The issue relative to how production, musical productions
- 22 were presented at the venue, at the Wang, in terms of the
- 23 respective responsibilities, that was the same during 2003 to
- 24 2008 as it is today, correct?
- MR. TELEGEN: Objection. You say the issues. Do you mean

- 1 has the pressure to do business one way or the other changed
- 2 since then or does the definition of those terms stay the same?
- 3 Those are different questions.
- 4 BY MR. DUMONT:
- 5 Q Let me ask it this way. Back in 2003-2008, producers
- 6 contracted with the Wang, correct?
- 7 A That's correct.
- 8 Q To have presentations, correct?
- 9 A That's correct.
- 10 Q And currently, we see three of them, there are musicals
- 11 that are contracted with the Wang, correct? We had Annie. We
- 12 had White Christmas and most recently Elf. Correct?
- 13 A That's correct.
- 14 O Other than the fact that we don't have a collective
- 15 bargaining agreement in place right now, is there anything
- 16 different between the authority and the responsibilities of a
- 17 producer today versus a producer back in 2006?
- 18 A I don't believe so.
- 19 Q So back in 2006, 2007, we had a collective bargaining
- 20 agreement that said that a producer who came in couldn't use
- 21 recorded music to displace our bargaining unit, correct?
- 22 MR. TELEGEN: Asked and answered. The document speaks for
- 23 itself. It says what it says.
- 24 HEARING OFFICER BEDE: I'm just going to let him continue
- 25 the question just for the flow of the back and forth. Don't

- 1 make seven meals out of it, but you can go for this time.
- 2 MR. DUMONT: I'm just trying to make sure the record is
- 3 clear.
- 4 HEARING OFFICER BEDE: Yes.
- 5 MR. DUMONT: And I don't think the record was clear on
- 6 direct.
- 7 BY MR. DUMONT:
- 8 Q My question is under that collective bargaining agreement,
- 9 the producer didn't have the right to use recorded music,
- 10 correct?
- 11 A That's correct.
- 12 Q Now turning your attention to -- I'll put it in front of
- 13 you. Do you recall the show the Rockettes?
- 14 A Yes.
- 15 Q That Rockettes came in for its first run in December of
- 16 2004. Do you recall that?
- 17 A That's correct.
- 18 Q Now I'm going to show you what is Appendix D to Exhibit A.
- 19 Do you recall the circumstances at all relative to that
- 20 addendum?
- 21 A Yes, I recall this addendum.
- 22 Q Why was that addendum necessary?
- 23 A If I recall correctly, because there was discussion from
- 24 the musicians association on considering the Radio City
- 25 Christmas Spectacular a theatrical musical, which it was not.

- 1 Q So there was a disagreement between the Union and the
- 2 venue, the Wang, over whether Rockettes would be subject to the
- 3 live music prohibition, correct?
- 4 A That's correct.
- 5 Q That disagreement was resolved by virtue of the
- 6 Appendix D, which created a sort of whole timeless situation
- 7 for the Wang, correct?
- 8 A That's correct.
- 9 Q Moving forward to the testimony you gave relative to the
- 10 proposed successor agreement to the 2003-2008, well, 2004 to
- 11 2007, extended to 2008, and so I don't have to go back to my
- 12 office, I'm hoping I can clarify this, but if I have to -- were
- 13 you involved in those negotiations?
- 14 A I believe I participated in those discussions.
- 15 Q Do you recall that the parties reached a tentative
- 16 agreement on the successor agreement?
- 17 A I don't know at what point we stopped.
- 18 Q Do you recall seeing a document that was prepared by your
- 19 counsel that marked up in a professional manner, unlike what I
- 20 could do, that marked up the 2004-2007 collective bargaining
- 21 agreement to show what the tentative agreement was?
- 22 A There were discussions underway. At what point they were
- 23 at, I would have to go back.
- 24 Q I'll get it at lunch. But let me ask you this, do you
- 25 recall that at a point in time that the parties were unable to

- 1 consummate that successor agreement, there was a change in the
- 2 leadership of the Boston Musicians Association?
- 3 A At some point, there was a change in the leadership.
- 4 Q Do you recall that -- that change in leadership is the
- 5 current president, Mr. Hollenbeck?
- 6 A That would be correct.
- 7 Q Do you recall that the negotiations over the successor
- 8 agreement broke down over the issue of whether Mr. Hollenbeck
- 9 would extend the waiver for the Rockettes?
- 10 A I don't know.
- 11 Q But you testified, I believe, on direct that -- so it's
- 12 your memory that the negotiations were bogged down on a lot of
- 13 different issues that it really was about the fact that the
- 14 employer couldn't dictate the terms and conditions? Is that
- 15 your testimony?
- 16 A I believe that that's correct.
- 17 Q And it's not that the Wang -- the Wang, by the way, at
- 18 that point in time was a partnership with Madison Square
- 19 Gardens on the Rockettes, correct?
- 20 A Wang was in partnership with Madison Square Gardens on
- 21 booking the theater, not on Radio City Christmas Spectacular.
- 22 Q We'll deal with that after lunch. I'll have to go back to
- 23 my office. I didn't realize that would be an issue. Okay, so
- 24 now you testified that Elf did not require local musicians, is
- 25 that correct? Did I hear that correctly?

- 1 MR. TELEGEN: He said it didn't require the Wang to hire
- 2 local musicians.
- 3 MR. DUMONT: Well, let the record say whatever it says.
- 4 BY MR. DUMONT:
- 5 Q Local musicians were hired, correct?
- 6 A I do not know where Elf hired the musicians.
- 7 Q You do know that the -- you're actually signatory to the
- 8 Elf contract between Elf and the LLC that was formed by --
- 9 that's Net?
- 10 MR. TELEGEN: NETworks.
- 11 BY MR. DUMONT:
- 12 Q NETworks. Just so the record is clear, are you familiar
- 13 with the fact that NETworks creates an LLC when they take a
- 14 tour so that it's --
- 15 A I understand that NETworks would have, yes, that is normal
- 16 course of business.
- 17 Q I believe it's your name and your initials that are on the
- 18 Elf contract, correct?
- 19 A That's correct.
- 20 Q Is it your name on the Annie and White Christmas, also?
- 21 A Yes, it is.
- 22 MR. TELEGEN: He doesn't have the documents in front of
- 23 him.
- MR. DUMONT: I can get them there. I didn't know that his
- 25 memory was that bad that he'd forget that he was signatory to

- 1 the contracts. I've always found his memory to be pretty good.
- 2 But I can get them.
- 3 MR. TELEGEN: If you're going to ask him to testify about
- 4 the contracts, you probably ought to put the contracts in front
- 5 of him.
- 6 HEARING OFFICER BEDE: All right, we'll put the contract
- 7 in front of him.
- 8 MR. DUMONT: I'll get it in front of him. I was just
- 9 trying to spare us from putting -- I thought he might remember.
- 10 HEARING OFFICER BEDE: It's usually a little hard to
- 11 remember when you're sitting in the witness chair. We'll let
- 12 him reference whatever he likes.
- 13 BY MR. DUMONT:
- 14 Q Let me back up for a second. Which came first, Annie or
- 15 White Christmas?
- 16 A Annie came first.
- 17 Q Annie came first, okay.
- 18 MR. DUMONT: I've put in front of the witness, it's
- 19 Exhibit H to the position statement.
- 20 BY MR. DUMONT:
- 21 Q I can use this one. The template for that agreement, is
- 22 that a template that the Wang has?
- 23 A That is a template that we, whether it's us or in
- 24 partnership with our partner who presents a show with us, MSG.
- 25 Q Look at Page 3, Section E. I guess you could go back to

- 1 Page 2, but that's a provision we just sort of generally
- 2 testified to relative to the hiring, the staffing of musicians?
- 3 A Yes.
- 4 Q And in that particular one, I don't have it in front of
- 5 me, but there were so many that were going to be touring
- 6 musicians and how many were going to be --
- 7 A There were 13 musicians for Annie. The producer traveled
- 8 with 5 and needed 8 hired locally.
- 9 Q Those were hired locally, correct?
- 10 A That's correct.
- 11 Q Then if you turn over to Section 4(g), it suggests that
- 12 the expense incurred by the Wang Theatre would be a local
- 13 documented expense, is that correct?
- 14 A That's correct.
- 15 Q What is a local documented expense?
- 16 A Those are expenses that the promoter of the show would
- 17 incur in presenting the show on behalf of -- based on what is
- 18 required.
- 19 Q Is that local documented expense sort of allowed to be
- 20 counted for when you make -- when the theater and the producer
- 21 split up what is hopefully left over is extra, is that correct?
- 22 A Yes. When we promote a show, the local document, just
- 23 like what we pay the producer, the local documented expense
- 24 comes out of the ticket receipts.
- 25 Q I don't have it in front of me, but looking through that

- 1 template -- looking through that agreement, is there any places
- 2 where it was changed or --
- 3 MR. TELEGEN: I have to object to that question. I don't
- 4 know what it means.
- 5 HEARING OFFICER BEDE: Can you phrase it more
- 6 specifically?
- 7 BY MR. DUMONT:
- 8 Q Is there anything on that agreement that is handwritten or
- 9 is it all just typed as-is, other than your signature?
- 10 MR. TELEGEN: This document speaks for itself, Madam
- 11 Hearing Officer. You can thumb through the pages and see
- 12 what's handwritten and what's not. It's not a secret.
- 13 HEARING OFFICER BEDE: But to make the transcript a little
- 14 clearer, I will allow him to answer the question.
- 15 MR. DUMONT: We're building to something, trust me.
- 16 HEARING OFFICER BEDE: All right.
- 17 MR. DUMONT: We believe it's relevant.
- 18 HEARING OFFICER BEDE: All right, overruled. You can
- 19 answer the question.
- THE WITNESS: There are a couple of other handwritten
- 21 marks in the agreement.
- 22 BY MR. DUMONT:
- 23 Q Would those have been something that you initialed? Is
- 24 that your initials there?
- 25 A Those are my initials.

- 1 O And those would be as it relates to --
- 2 A From this, a tour name, another note here that was added
- 3 in an advertising section, terms.
- 4 Q And that's your initials.
- 5 A Yeah.
- 6 Q All right, that will speak for itself. I would just make
- 7 one note here. This is dated October 28, 2014, correct?
- 8 A Yes.
- 9 Q Would you have been the person who generated this final
- 10 document or had it generated at your direction?
- 11 A I would have reviewed that document. It would have been
- 12 generated by our legal counsel.
- 13 Q Now White Christmas, this is also one that you signed?
- 14 A That's correct.
- 15 Q This one is dated December 9, 2014.
- 16 A That's correct.
- 17 Q When did that play -- the record will show. It would have
- 18 been after December 9th?
- 19 A The dates are December 16th to the 28th.
- 20 Q Once again, is there any negotiations involved, that you
- 21 were involved in on this?
- 22 A There are negotiations on the terms of every single
- 23 agreement.
- Q What was your involvement with the Elf agreement, if any?
- 25 A Again, same thing. It was prepared by our legal counsel,

- 1 negotiated, and then signed.
- 2 Q So if I understand that correctly, the legal counsel would
- 3 prepare it, then it would come to you and if there are changes,
- 4 I guess potentially you would make those changes in the
- 5 document?
- 6 A Typically, I would not make --
- 7 MR. TELEGEN: Objection. I don't know what that means.
- 8 Again, presumably, the witness could not unilaterally change a
- 9 document that's been negotiated with another party.
- 10 HEARING OFFICER BEDE: To clarify, what sort of changes
- 11 are you asking?
- MR. DUMONT: Why don't I get the document? We'll cut to
- 13 the chase here.
- 14 BY MR. DUMONT:
- 15 Q Let me put in front of you what is Exhibit I to the
- 16 position statement. Review that for a moment, would you,
- 17 please?
- 18 A Okay.
- 19 Q In that document, I believe it's Section 3(e), I know it's
- 20 the (e), but I'm not sure whether it's 3 or not.
- 21 MR. TELEGEN: Does he have a question?
- MR. DUMONT: I'm directing -- I asked him, I don't have it
- 23 in front of me, but I thought --
- THE WITNESS: 3(e) starts the engagement of all musicians.
- 25 Is that the provision you want?

- 1 MR. DUMONT: No, I'll take that back. It's 2(e).
- MR. TELEGEN: Mine doesn't have a 2(e).
- 3 THE WITNESS: It's 3. That's the paragraph you're
- 4 referring to?
- 5 MR. DUMONT: Yeah, it is 3. Okay. So (e) has been
- 6 modified in handwriting, correct, from the template, is that
- 7 correct?
- 8 MR. TELEGEN: I'm sorry, there's an assumption in that
- 9 question there is a template. I'm not sure what the template
- 10 is. There was a draft. It looks like it was modified
- 11 computer-wise because it's black-lining showing, so something
- 12 got modified to do that and the modifications show in the
- 13 document.
- MR. DUMONT: Please excuse the word template. I have not
- 15 compared line by line all three documents, but they certainly
- 16 appear to the naked eye to be very similar, but I won't use
- 17 that word. To the extent it is, it's only my word, not the
- 18 witness' word.
- 19 HEARING OFFICER BEDE: All right, so noted.
- 20 BY MR. DUMONT:
- 21 Q So you see the changes that have been made to the lawyer's
- 22 draft that has been stricken and handwritten, correct?
- 23 A That's correct.
- 24 Q Is that your writing? Is that something you did?
- 25 A That is not my writing.

- 1 Q Do you have any idea how that came to be part of the
- 2 agreement?
- 3 A During the negotiations between our legal counsel and the
- 4 producer.
- 5 Q So if that was done by your legal counsel, would there
- 6 have been some reason why that would not have been -- would
- 7 have required that to be changed in the manner that it was,
- 8 that is using a ruler and longhand?
- 9 MR. TELEGEN: Objection. Hypothetical and I think the
- 10 premise of the question is wrong. All the witness can say is
- 11 to what the people who negotiated the agreement. He can't
- 12 testify as to why somebody changed it unless someone told him.
- 13 HEARING OFFICER BEDE: Did anyone tell you how this part
- 14 of the agreement happened to be changed or do you not know?
- 15 THE WITNESS: No, I do not know.
- 16 HEARING OFFICER BEDE: All right.
- 17 BY MR. DUMONT:
- 18 Q So directing your attention forward to Section 4, I
- 19 believe it's Section 4(q), do you understand the import of the
- 20 two changes that I directed your attention to, understand the
- 21 import of that?
- 22 MR. TELEGEN: Objection. I don't want to obstruct, but do
- 23 we mean the not unreasonably withheld or the way musicians
- 24 would be accounted for?
- 25 BY MR. DUMONT:

- 1 Q Let me say it this way, under the Annie and the White
- 2 Christmas agreements, the locally sources musicians were hired
- 3 by the Wang, correct?
- 4 A They were hired by the Wang for the producer, correct.
- 5 Q Right, for the production, the production that the Wang
- 6 was promoting, correct?
- 7 A The promotion that we had engaged to promote.
- 8 Q And the expenditure for the locally sources musicians was
- 9 counted for as a local direct expense, correct?
- 10 A That's correct.
- 11 Q And in Elf, what occurred was the locally -- the local
- 12 musicians were put on the producers' payroll, and the Wang
- 13 agreed to reimburse the producers for the cost of those
- 14 employees, correct?
- 15 MR. TELEGEN: Objection. The document speaks for itself.
- 16 But it says locally -- local expenses, explicit what it says.
- 17 And the witness has already testified what that means, it comes
- 18 off the ticket revenue when you're doing the accounting.
- 19 MR. DUMONT: But that's not how it happened at Elf,
- 20 correct? Or is it?
- 21 MR. TELEGEN: The witness can answer that question.
- 22 Sorry, the witness can answer the question that just got asked,
- 23 was it treated as a local expense.
- THE WITNESS: It was treated as a local expense.
- 25 BY MR. DUMONT:

- 1 Q And the amount that was treated as a local expense was
- 2 reimbursed to the producer, correct?
- 3 MR. TELEGEN: Objection.
- 4 HEARING OFFICER BEDE: Overruled. I'm not going to let
- 5 you do this all day, but you can do it this time. Yes, you can
- 6 follow this train of questioning through one more time, but
- 7 that's it.
- 8 BY MR. DUMONT:
- 9 Q The last page, I believe the last page of this agreement,
- 10 excuse me, the last page of this agreement represents what, if
- 11 you know?
- 12 A The cost that was -- the local documented expense that was
- 13 paid for the musicians as we negotiated in the agreement.
- 14 Q That was the local documented expense that was paid by the
- 15 producer and reimbursed by the Wang, correct?
- MR. TELEGEN: Objection to the last phrase. He already
- 17 said what a local reimbursed expense means. It's not -- he can
- 18 explain it again, but when he said the Wang paid the producer,
- 19 I mean I don't believe that's what he's testified to.
- 20 HEARING OFFICER BEDE: If that's not what he's testified
- 21 to then he can correct the assumption and make it clear on the
- 22 record.
- 23 THE WITNESS: It was a local documented expense that we
- 24 paid as part of this show.
- 25 BY MR. DUMONT:

- 1 Q Let me ask you this, do you know if any other contract
- 2 between the Wang, as the promoter, and any producer in which
- 3 the flow of money is as is set forth in the Elf agreement?
- 4 A We have had other shows that we have paid for a certain
- 5 number of musicians to the producer as a local documented
- 6 expense.
- 7 Q That the producer would have hired the local musicians?
- 8 A That we've paid for musicians, I should say.
- 9 Q You did for White Christmas. You did for Annie. Correct?
- 10 A No, but I mean we've paid the producer for musicians, a
- 11 certain number of musicians. That was part of the financial
- 12 terms of the presentation, for whatever reason.
- 13 Q Do you recall any other agreement in which the Wang paid
- 14 the producer for local musicians?
- 15 A I don't, wouldn't have any knowledge to say.
- 16 Q That particular contract has -- instead of the simple date
- 17 that is on the Annie and White Christmas, has a date that says
- 18 "as of" the October date, did you have any involvement in
- 19 backdating that?
- 20 MR. TELEGEN: Objection. No one has testified it was
- 21 backdated.
- 22 BY MR. DUMONT:
- 23 Q Well, what does -- do you have any knowledge as to what
- "as of" means?
- 25 A I --

- 1 Q Okay. So to your knowledge, the changes that are made to
- 2 that -- do you have any idea when the changes to that agreement
- 3 were made?
- 4 A No.
- 5 Q You don't have any knowledge as to why they were made?
- 6 A They were negotiated. The changes were negotiated
- 7 changes.
- 8 Q Now, okay, let's get this back so I don't lose it.
- 9 A I'm not sure if this is in the correct order.
- 10 Q That's okay, don't worry about it.
- 11 MR. TELEGEN: Let the record reflect that Mr. Dumont has
- 12 destroyed the stapler.
- 13 MR. DUMONT: For which I will be charged.
- 14 COURT REPORTER: No, I did it.
- 15 BY MR. DUMONT:
- 16 Q Am I correct that at the Wang, we are currently in the
- 17 2015-2016 seasons?
- 18 A That is one way of classifying presentations.
- 19 Q That's how it is reflected on the web site, correct?
- 20 A From the shows perspective, yes.
- 21 Q And that's, I don't want to use the word standard, but
- 22 that's been around for a fairly long time that in theater they
- 23 generally are dark or near dark during the summer, and the
- 24 season runs from late summer, early fall to May or June?
- 25 A We are not dark during the summer on a regular basis.

- 1 We're dark in January.
- 2 Q But you would agree with me that publicly it is being
- 3 presented as the season is 2015-2016?
- 4 A That is one representation of it. But we do not have a
- 5 formal season.
- 6 Q I believe you testified to this, but I just want to make
- 7 sure I'm clear. When a show like Elf comes in that needs to be
- 8 people who do the lighting, and the sound, and the set,
- 9 correct?
- 10 A Correct.
- 11 Q Somebody needs to load them in and somebody needs to load
- 12 them out, correct?
- 13 A Correct.
- 14 Q You can't put on the show without that, correct?
- 15 A That's correct.
- 16 Q And most of the time, certainly if it's a musical, it's a
- 17 production, you're going to need -- the producer is going to
- 18 need to have wardrobe people, correct?
- 19 A Correct.
- 20 Q And of course if you let public into the theater, you need
- 21 to have ushers for those shows, correct?
- 22 A That's correct.
- 23 Q And you can't leave the Teamsters out, because they need
- 24 their takes, too, so you need to have some Teamsters who are
- 25 going to take it off the truck and get it on your loading dock,

- 1 correct?
- 2 A That's correct.
- 3 Q In all of those instances, those are subject to collective
- 4 bargaining agreements that are negotiated by the Wang and
- 5 respective locals, correct?
- 6 A That's correct.
- 7 Q The producers who come in, they don't have a say as to
- 8 what the ushers are going to be paid, correct?
- 9 A That's correct.
- 10 Q And they don't have a say as to what the Teamsters are
- 11 going to be paid.
- 12 A That's correct.
- 13 Q Or the stagehands, correct?
- 14 A Correct.
- 15 Q Or the terms and conditions of those individuals, correct?
- 16 A Correct.
- 17 Q And when we're talking about relative expense for a
- 18 musical that comes in, we're talking about probably, generally
- 19 speaking, the stagehands would be the biggest expense, correct,
- 20 versus the --
- 21 A Probably.
- 22 Q Yes, exactly. And the producers just accept the fact that
- 23 these terms and conditions are what apply to their shows when
- 24 they play at the venue, correct?
- 25 A Yes.

- 1 Q They may not like it, correct? Wish they could pay less,
- 2 but they are subject to those --
- 3 A Correct.
- 4 Q -- terms and conditions, correct? Has the Wang ever taken
- 5 the position, to your knowledge, that it shouldn't negotiation
- 6 -- can no longer negotiate with the Teamsters?
- 7 A No.
- 8 Q How about with the stagehands?
- 9 A No.
- 10 Q How about with the wardrobe?
- 11 A No.
- 12 O How about with the ushers?
- 13 A No.
- 14 Q But you're taking the position that the Wang should no
- 15 longer negotiate with the musicians?
- 16 MR. TELEGEN: Objection. He's not taking any position, I
- 17 am.
- 18 HEARING OFFICER BEDE: All right, sustained.
- 19 MR. DUMONT: That's fine.
- 20 BY MR. DUMONT:
- 21 Q Okay. Let's touch on the role of the contractors. So the
- 22 contractors, if there's been a long-term contractor, who is the
- 23 long-term contractor to the Wang?
- 24 A Fred Buda.
- 25 Q Fred, do you know is Fred a member of the Boston Musicians

- 1 Association?
- 2 A It's my understanding that he is.
- 3 Q And he actually plays some, too, doesn't he?
- 4 A Plays quite a bit.
- 5 Q Does the Wang -- what's the nature of the Wang's
- 6 relationship with Mr. Buda when he is not playing, but when he
- 7 has acted in the past as a contractor? Is he paid for that?
- 8 A He's paid for contracting.
- 9 Q Is he paid as an independent contractor or is he W-2'd, if
- 10 you know?
- 11 A He's W-2'd.
- 12 Q So when we're talking about those situation that, in the
- 13 past, the Wang has hired local musicians, they've been hired --
- 14 they've been identified and hired by an employee of the Wang,
- 15 correct? That would be somebody that you W-2, correct?
- 16 A Correct.
- 17 Q I wasn't sure that was clear.
- 18 MR. DUMONT: If I could just have a moment? I just may be
- 19 done.
- 20 HEARING OFFICER BEDE: Off the record for a moment.
- 21 (Pause off the record from 11:41 a.m. to 11:41 a.m.)
- 22 HEARING OFFICER BEDE: On the record.
- 23 BY MR. DUMONT:
- 24 Q Do you have any knowledge as to whether the travelers,
- 25 when local musicians are hired and there are also traveling

- 1 musicians, do you have any knowledge as to whether the terms
- 2 and conditions for the travelers are the same or different than
- 3 for the local musicians?
- 4 A I do not know.
- 5 Q And the Wizard of Oz, that's coming in when, April?
- 6 A In April.
- 7 Q Do you know whether the Wizard of Oz is coming in under
- 8 Pamphlet B?
- 9 A I don't know for a fact right now.
- 10 Q Is it your understanding that it is coming in under
- 11 Pamphlet B?
- MR. TELEGEN: I'm not sure that's different.
- 13 THE WITNESS: I don't know, I have --
- 14 MR. TELEGEN: Objection.
- 15 HEARING OFFICER BEDE: Sustained. If he doesn't know, he
- 16 doesn't know.
- 17 MR. DUMONT: Now if I could go off the record for a moment
- 18 -- not off the record, I won't say that. Can I have a moment?
- 19 HEARING OFFICER BEDE: Are we sure this time? Okay, off
- 20 the record, please.
- 21 (Pause off the record from 11:42 a.m. to 11:44 a.m.)
- 22 HEARING OFFICER BEDE: Back on the record.
- MR. DUMONT: I have no further questions of this witness.
- 24 Thank you.
- 25 HEARING OFFICER BEDE: Thank you. Redirect, Mr. Telegen?

- 1 MR. TELEGEN: Sure.
- 2 REDIRECT EXAMINATION
- 3 BY MR. TELEGEN:
- 4 Q If the Wang declined to book shows that use only recorded
- 5 music, do they have other venues they can go to in Boston?
- 6 A They have other venues that they could play.
- 7 Q The Teamsters, they load things, take things off trucks
- 8 and bring them into the theater?
- 9 A They load and unload the trucks.
- 10 Q Does it matter what show there is to when they load and
- 11 unload the trucks?
- 12 A No.
- 13 Q Is there any artistic content to the loading and unloading
- 14 of trucks?
- 15 A No.
- 16 Q Although, the Teamsters might disagree. And the ticket
- 17 takers, do they do the same thing for every show?
- 18 A That's correct.
- 19 Q And the ushers, do they ush (sic) the same way for every
- 20 show?
- 21 A That's correct.
- 22 Q Now the wardrobe people and the stagehands, do they have
- 23 to adjust to the particular show?
- 24 A To some extent, yes.
- 25 Q But do they perform the same function?

- 1 A They perform essentially the same basic function.
- 2 Q Someone who operates the lights, operates the lights?
- 3 A Typically, the show operates the lights. We actually do
- 4 not.
- 5 Q And the people who do the wardrobe, they take people's
- 6 clothes off and put people's clothes on?
- 7 A Make repairs, yes, laundry.
- 8 Q What changes from show to show is just the costume?
- 9 A Pretty much.
- 10 MR. TELEGEN: No further questions.
- 11 HEARING OFFICER BEDE: All right, thank you. Any recross?
- 12 MR. DUMONT: Just a quick one.
- 13 RECROSS EXAMINATION
- 14 BY MR. DUMONT:
- 15 Q Relates to the stagehands, the sound people, and the
- 16 lighting -- let's start with the sound, that's under the
- 17 direction of who?
- 18 A Our stagehands are under the direction of our production
- 19 manager.
- 20 Q In terms of how the sound is going to be, I don't want to
- 21 use the word handle, but I'll use it for lack of a better word,
- 22 how the sound requirements, those come from who?
- 23 A Again, similar to the lighting, our stagehands would
- 24 generally not be operating the actual sound console or the
- 25 lighting console for a show, because that is very specific to

- 1 the show. They would be more in a supporting role.
- 2 Q But the schematic that would tell the stagehands what
- 3 lights to put up and where, that would be done by the
- 4 stagehands, correct?
- 5 A That would be correct.
- 6 Q And that would be at the direction, however the direction
- 7 gets passed to them, at the direction of the show, correct?
- 8 A Information would be passed within the departments that
- 9 they are working in.
- 10 MR. DUMONT: No further questions. Thank you.
- 11 HEARING OFFICER BEDE: Thank you. The witness can step
- 12 down, thank you.
- 13 (Witness excused.)
- 14 HEARING OFFICER BEDE: Off the record for a moment.
- (Whereupon, at 11:47 a.m., a luncheon recess was taken.)

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- 2 (Time Noted: 12:33 p.m.)
- 3 HEARING OFFICER BEDE: On the record.
- 4 Petitioner, can you call your first witness, please?
- 5 MR. DUMONT: yes, Mark Pinto, please.
- 6 HEARING OFFICER BEDE: Will you raise your right hand?
- 7 (Whereupon,
- 8 MARK PINTO,
- 9 was called as a witness by and on behalf of the Petitioner and,
- 10 after having been duly sworn, was examined and testified as
- 11 follows:)
- 12 HEARING OFFICER BEDE: Please have a seat. Will you state
- 13 and spell your name for the record, please.
- 14 THE WITNESS: Mark Pinto, M-A-R-K, P-I-N-T-O.
- 15 HEARING OFFICER BEDE: All right, go ahead.
- 16 DIRECT EXAMINATION
- 17 BY MR. DUMONT:
- 18 Q Mr. Pinto, are you a musician by trade?
- 19 A Yes.
- 20 Q Do you play performances?
- 21 A Yes, regularly.
- 22 Q Do you hold a position with Boston Musicians Association?
- 23 A Yes. I'm the secretary/treasurer.
- 24 Q The Boston Musicians Association, is that a local under
- 25 the jurisdiction of the American Federation of Musicians?

- 1 A Yes.
- 2 Q Within the structure of the AFM, is there an association
- 3 known as the Theater Musicians Association?
- 4 A Yes, there is.
- 5 Q Do you hold a position with that office?
- 6 A I do. I am also the secretary/treasurer of the Theater
- 7 Musicians Conference of the AFM.
- 8 Q What if any does the conference do?
- 9 A The conference represents the interests of touring and
- 10 local theater musicians.
- 11 Q How long have you been involved with the conference?
- 12 A I became treasurer, I want to say, in 2012, so it's been
- 13 about 3 years.
- 14 Q How long have you been an officer with the BMA?
- 15 A I'm in my 21st year.
- 16 Q Are you familiar with the term Pamphlet B?
- 17 A Yes.
- 18 Q What is Pamphlet B?
- 19 A Pamphlet B is an agreement negotiated between the American
- 20 Federation of Musicians, the international office, and the
- 21 Broadway Producers for Touring Productions. In that agreement
- 22 are the wages and working conditions for touring, traveling
- 23 musicians.
- 24 Q Are those people referred to as travelers?
- 25 A Yes.

- 1 Q Are you familiar with the term SET agreement?
- 2 A Yes. SET agreement stands for short engagement tour.
- 3 It's sort of a subset of Pamphlet B.
- 4 Q What distinguishes -- is the SET agreement, who negotiates
- 5 the SET agreement?
- 6 A The AFM negotiates with the producer.
- 7 Q Are you familiar with the term Rule 24?
- 8 A Yes.
- 9 O What is Rule 24?
- 10 A Rule 24 addresses the hiring of local musicians when a
- 11 show is traveling self-contained. So if a musical is
- 12 self-contained, when they get to a city or a venue that has
- 13 minimums, Rule 24 takes effect and it dictates the number of
- 14 local hires.
- 15 Q Does Rule 24 apply to both Pamphlet B and the SET
- 16 agreement?
- 17 MR. TELEGEN: Objection. If we're going to have testimony
- 18 about documents that have legal effect, can we just have the
- 19 documents rather than having this witness' understanding. I
- 20 mean he's experienced, but the region has a right to see what
- 21 the papers are he's testifying. For example, we don't know
- 22 what Rule 24 is a part of. It comes before 23 and 25.
- 23 BY MR. DUMONT:
- 24 Q Is Rule 24 part of Pamphlet B?
- 25 A Yes.

- 1 MR. TELEGEN: And we don't know what Pamphlet B is, what
- 2 kind of agreement between.
- 3 HEARING OFFICER BEDE: Do you plan to put the underlying
- 4 documents into evidence?
- 5 MR. DUMONT: Rule 24 is already there. It's just by way
- 6 of explaining where Rule 24 comes from.
- 7 MR. TELEGEN: I'm sorry. It's where?
- 8 HEARING OFFICER BEDE: Where in evidence is Rule 24?
- 9 MR. DUMONT: Rule 24 is the addendum to Exhibit A. It's
- 10 Appendix G, it says Pamphlet B, touring theatrical musicals,
- 11 Rule 24. It's a part of Exhibit A.
- MR. TELEGEN: Madam Hearing Officer, that document expired
- 13 December 31, 2007. The witness is testifying about it as if it
- 14 exists, which it may well, but we don't know where it exists.
- 15 It's an agreement between someone and someone.
- MR. DUMONT: He just said who it's between. I don't know
- 17 how anybody --
- 18 HEARING OFFICER BEDE: Has the rule been unchanged since
- 19 that expired collective bargaining agreement or in current
- 20 agreements is it a different rule?
- 21 THE WITNESS: It is unchanged since the expired agreement.
- 22 HEARING OFFICER BEDE: How much background is this witness
- 23 going to give on various -- on the structure of the Union and
- 24 these various rules?
- MR. DUMONT: I'm not sure that we need to get much at all.

- 1 My dissertation and opening was not evidence, so the -- I don't
- 2 know why this is so contentious, but Exhibit A, which was put
- 3 in by my brother, if you go to Article 4, it makes specific
- 4 reference to what Pamphlet B is. And it directs the reader to
- 5 Rule 24, which is part of the appendix.
- 6 MR. TELEGEN: Madam Hearing Officer, the reason for this
- 7 is, I think, pretty clear. Pamphlet B is no longer a
- 8 contractual document as far as the record shows applicable to
- 9 either the Petitioner in its relationship with the Wang. So if
- 10 it has any significance here, it's either an historical
- 11 document that's no longer in effect or it's a part of a
- 12 contract that is far into this agreement. It's worth knowing
- 13 where it is, what its current applicability is, and what it
- 14 says, and, in fact, how it relates to other things. I assume
- 15 it's Rules 1 through 23, and 25, et seq, and it's a rule. I
- 16 don't see how that can particularly move the region one way or
- 17 the other.
- 18 HEARING OFFICER BEDE: Mr. Dumont, what's the reasoning
- 19 behind this line of questioning?
- 20 MR. DUMONT: The reasoning is I believe the fourth issue
- 21 that's raised by the position statement goes to where we spent
- 22 a fair amount of time with, which is sort of I'll characterize
- 23 it as the futility argument. Somehow that since the producer
- 24 is not at the table, at the Wang, somehow the petition should
- 25 be dismissed because the Wang can't influence the terms and

- 1 conditions of employment. We've already spent considerable
- 2 time on this. You have a document. We just had a witness who
- 3 testified how the producer interacts with the venue hasn't
- 4 changed since that document. I'm not the one who raised the
- 5 issue. I can't understand the issue in light of the facts, but
- 6 I didn't raise the issue.
- 7 HEARING OFFICER BEDE: All right, objection overruled. If
- 8 it does just turn out to be historical, extraneous information,
- 9 it's not going to hurt anything by being in the record. Please
- 10 go on.
- MR. DUMONT: Okay. Now I've forgotten where I was, but --
- 12 HEARING OFFICER BEDE: All right, start over, in that
- 13 case.
- 14 BY MR. DUMONT:
- 15 Q You may have testified and I wasn't going to go much
- 16 further than this, so in terms of -- what does Rule 24 do,
- 17 where it is applicable?
- 18 A It dictates the amount of -- when a show is
- 19 self-contained, meaning the musicians are traveling with the
- 20 show, it will dictate the amount of local hires required for
- 21 that engagement.
- 22 Q Was Rule 24 applicable when there was an in-force
- 23 collective bargaining agreement at the Wang?
- 24 A Yes.
- 25 Q Were local musicians hired pursuant to Rule 24, to your

- 1 knowledge?
- 2 A Yes.
- 3 Q Were you one of those musicians?
- 4 A Yes.
- 5 Q Are the terms and conditions that applied to you when you
- 6 were hired pursuant to Rule 24, were those terms and conditions
- 7 as set forth in the agreement that's between the BMA and the
- 8 Wang that's dated September 2004 to September 2007?
- 9 A Did they apply --
- 10 Q To you? When you were hired pursuant to Rule 24, were the
- 11 terms --
- 12 A Oh, yes. Yes, they were.
- 13 Q Do these terms apply to travelers?
- 14 A No, they don't.
- 15 Q The terms that apply to travelers would be, where would
- 16 they be found?
- 17 A In the agreement called Pamphlet B.
- 18 Q Would they also be found in the agreement referred to as
- 19 the SET agreement?
- 20 A Yes.
- 21 Q To your knowledge, use for example the rehearsal
- 22 requirements that were in effect under Exhibit A, which is the
- 23 2004-2007 agreement, were those rehearsal requirements the same
- 24 for you as a local musician and the travelers?
- 25 A When we are all rehearsing together, we're probably

- 1 working under the wages of two different agreements. In that
- 2 case, we are -- if there is a five-hour rehearsal, we're all
- 3 rehearsing a five-hour call. The difference would be the
- 4 travelers may have multiple calls during a week, or a two or
- 5 three-week run that the locals are not involved in, because
- 6 they're traveling with the show and there's rehearsal calls
- 7 we're unaware of that they have to be obligated to perform.
- 8 Q Just so the record is clear, what is a call?
- 9 A A call is a service, the local contractor notifies you of
- 10 the hours of when you need to be present to rehearse, 9:00 to
- 11 12:00, 10:00 to 2:00, and what time the performance is, an
- 12 8 o'clock performance, you usually have to be there at 7:30.
- 13 Q Does the Boston Musicians Association, does it have a
- 14 collective bargaining agreement with what we commonly refer to
- 15 as the Opera House?
- 16 A Yes.
- 17 Q Do you, as a musician, play under that agreement at the
- 18 Opera House?
- 19 A Yes, I do.
- 20 Q Do you play for productions listed -- to your knowledge,
- 21 does the Opera House produce any productions that are shown at
- 22 the Opera House?
- 23 A Not to my knowledge, no.
- MR. DUMONT: Mark this for identification, Petitioner's 1.
- 25 (Petitioner's P-1 identified.)

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- 1 BY MR. DUMONT:
- 2 Q I'm not going to get into the terms of that, but would you
- 3 just take a look at it and tell me if you could identify that
- 4 document?
- 5 A Yes. This is the Boston Opera House agreement with the
- 6 Boston Musicians Association.
- 7 Q That is currently in effect?
- 8 A That is currently in effect, yes.
- 9 Q When most recently have you played for a production at the
- 10 Opera House?
- 11 A Just last week, Wednesday through Sunday.
- 12 Q What position description is that?
- 13 A Beauty and the Beast.
- 14 Q Were the terms and conditions -- Beauty and the Beast,
- 15 that was not produced by the Opera House?
- 16 A No.
- 17 Q The terms and conditions that applied to you, while you
- 18 were working last week are set forth in Petitioner's 1?
- 19 A Yes.
- MR. DUMONT: I'd offer Petitioner's 1.
- 21 MR. TELEGEN: No objection.
- 22 HEARING OFFICER BEDE: Received.
- 23 (Petitioner's P-1 received.)
- 24 BY MR. DUMONT:
- 25 Q As part of your responsibilities as secretary/treasurer of

- 1 the Boston Musicians Association, do you track the -- track for
- 2 lack of a better word, or do you record the dues and pension
- 3 that are received by the BMA from the various venues?
- 4 A Yes.
- 5 Q Is that information in a database that you maintain?
- 6 A Yes.
- 7 Q From that database, are you able to report or have the
- 8 database report the employment history of the various members
- 9 at a venue such as the Wang?
- 10 A Yes.
- 11 Q And you can pull that for how far back?
- 12 A I can go back to probably 1988. Beyond that, it would be
- 13 all hard copies.
- MR. DUMONT: This is 2.
- 15 (Petitioner's P-2 identified.)
- 16 BY MR. DUMONT:
- 17 Q Mr. Pinto, can you identify what's been marked for
- 18 identification as Petitioner 2?
- 19 A Yes. This is a work history report from my database
- 20 listing musicians that have worked at the Wang Center.
- 21 Q It appears from my copy that there was some highlighting
- 22 of individuals. Is that something that you did?
- 23 A Yes. I went through this report and the musicians who are
- 24 highlighted, there's a lot of musicians here, but the musicians
- 25 who are highlighted I would deem as the long-term, consistent

- 1 employees of the Wang Center for the dates set forth at the top
- 2 of this report. And if we went even further back, these names
- 3 would be pretty consistent.
- 4 Q And without having to go through this, this would be
- 5 consistent with what the Employer has put on, there would be no
- 6 start or end dates for 2015, correct?
- 7 A Correct.
- 8 Q There shouldn't be.
- 9 A Yeah, there's no 2015 dates here.
- 10 MR. DUMONT: I'd offer Petitioner's 2.
- 11 MR. TELEGEN: I have voir dire.
- 12 HEARING OFFICER BEDE: Sure.
- 13 VOIR DIRE EXAMINATION
- 14 BY MR. TELEGEN:
- 15 Q The start date and end date, does that tell you how many
- 16 days were worked -- these are beginning week, ending dates?
- 17 A It's typically, yeah, begin date, end date. It's probably
- 18 on the payroll report I get, it'll probably say week of 6/5.
- 19 Q This doesn't tell you how many hours the employee worked
- 20 in that particular week?
- 21 A No.
- 22 Q It doesn't tell you how many days he or she worked in that
- 23 particular week?
- 24 A No.
- 25 Q And when you say the people you deem to be the core, you

- 1 deem that based on these papers, is that correct?
- 2 A Yes.
- 3 Q Just so the record is clear, this is by weeks, so in some
- 4 cases two weeks would be a single show, is that correct?
- 5 A Yes. There could be -- the way this report just gives the
- 6 person's name and the weeks worked, it's not specific to the
- 7 shows.
- 8 Q So if we look at your entry, the week starting 11/2 and
- 9 week starting 11/9 were the same show, is that correct?
- 10 A Most likely, yes.
- 11 Q I should say 11/9/14.
- 12 A Yeah, that's a two-week show.
- 13 Q And the same is true with 12/14 and 12/22, same show?
- 14 A Right, that's Annie and White Christmas.
- 15 Q So this is consistent with -- have you seen the document
- 16 that the company submitted at least back to the 2014
- 17 performances?
- 18 A I believe not.
- 19 MR. TELEGEN: No objection to the document.
- 20 HEARING OFFICER BEDE: The document is received as
- 21 Petitioner's 2.
- 22 (Petitioner's P-2 received.)
- 23 MR. DUMONT: I don't believe I have any further questions
- 24 for this witness.
- 25 CROSS-EXAMINATION

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- 1 BY MR. TELEGEN:
- 2 Q Mr. Pinto, first of all, was Beauty and the Beast a
- 3 Pamphlet B show?
- 4 A Beauty and the Beast was a completely non-union
- 5 production, non-equity and non-AFM.
- 6 Q When you played at Beauty and the Beast, were you covered
- 7 by the collective bargaining agreement?
- 8 A Yes.
- 9 Q So there were no -- was there a traveling orchestra with
- 10 Beauty and the Beast?
- 11 A There is a traveling orchestra and we have in the Opera
- 12 House document that was passed out, there are minimums in
- 13 there, minimum staffing for non-union shows. There is a
- 14 formula in there to staff a non-union show.
- 15 Q Do you know whether some of the non-union orchestra of
- 16 Beauty and the Beast was laid off for the period of time that
- 17 Beauty and the Beast was in Boston?
- 18 A Yes, they were laid off, yeah.
- 19 Q Do you know whether any charges were filed with the
- 20 National Labor Relations Board on account of that lay off?
- 21 A No.
- 22 Q What other musicals were performed at the Opera House in
- 23 2015?
- 24 A Motown the Musical, Newsies, Beautiful, Cinderella, and
- 25 off the top of my head there could be another one in there.

- 1 Q Are you aware whether each of those musicals was conducted
- 2 in complete compliance with the collective bargaining
- 3 agreement?
- 4 A Yes, all those shows were AFM shows traveling over
- 5 Pamphlet B and the local musicians were hired according to the
- 6 agreement with the Opera House.
- 7 Q And all the rates were paid in accordance with the
- 8 contract?
- 9 A Yes.
- 10 Q What other collective bargaining agreements are in effect
- 11 in Greater Boston that are venue type contracts as opposed to
- 12 orchestra type contracts? Does that distinction make sense to
- 13 you?
- 14 A Yeah.
- MR. TELEGEN: Does it make sense to the hearing officer?
- 16 HEARING OFFICER BEDE: I would actually like you to
- 17 clarify that just a little bit.
- 18 BY MR. TELEGEN:
- 19 Q Okay. Your union has collective bargaining agreements
- 20 with, for example, the Boston Symphony Orchestra?
- 21 A Yes.
- 22 Q And it covers the musicians who play week in, week out
- 23 with the Boston Symphony Orchestra?
- 24 A Yes.
- 25 Q And it has such agreements with the Boston AFR (ph.)?

- 1 A Yes.
- 2 Q I won't go through the entire thing. There are orchestras
- 3 in Boston and the population of the people who are covered by
- 4 those contracts is largely stated.
- 5 A Correct, yes.
- 6 Q The contract you used to have with the Wang Theatre and
- 7 used to have with the Shubert Theatre, and now have with the
- 8 Boston Opera House are venue type contracts. They apply to
- 9 people when they are hired to work at a particular performance,
- 10 is that correct?
- 11 A Correct.
- 12 Q Other than the Boston Opera House, how many current
- 13 collective bargaining agreements do you have in Greater Boston
- 14 for venue type contracts?
- 15 A We have American Repertory Theater in Harvard, Huntington
- 16 Theater Company. Those may be it. Formerly, we had the
- 17 Shubert and the Colonial, which is now closed. But I want to
- 18 say those are the three.
- 19 Q So ART, Huntington Theater, and --
- 20 A Boston Opera House.
- 21 Q Are there other venues which you don't have venue
- 22 contracts?
- 23 A I suppose. There's plenty of venues, yeah.
- 24 Q There's no venue contract for Symphony Hall?
- 25 A No, there is not.

- 1 O Or for Jordan Hall?
- 2 A There is not.
- 3 Q The Sanders Theater (ph.)?
- 4 A There is not. Most of our groups that go into those
- 5 theaters we have agreements with, but not with those, not with
- 6 the specific venue, correct.
- 7 Q Rather than keep us sitting here testing my memory of all
- 8 the venues in Greater Boston, there are many, right?
- 9 A Yeah.
- 10 MR. TELEGEN: This is not an adjudicatory hearing. I
- 11 thought we would see all the collective bargaining agreements
- 12 that are venue type agreements. I would urge the Union to
- 13 submit the ART and the Huntington Theater Company venue
- 14 agreements, if they are readily available.
- 15 HEARING OFFICER BEDE: All right.
- 16 BY MR. TELEGEN:
- 17 Q You do other things than play at the Opera House, under
- 18 that collective bargaining agreement, and on occasion at the
- 19 Wang Theatre, where there is no longer a collective bargaining
- 20 agreement, is that correct?
- 21 A Correct, yeah. I work other venues, yes.
- 22 Q And you belong to various groups that are -- are you a
- 23 member of any symphony or other kind of orchestra agreement?
- 24 A I'm a freelance musician.
- 25 Q So you play venues, you play weddings, you play

- 1 bar mitzvahs?
- 2 A Yeah. I try to stay away from those, but, yeah.
- 3 Q What controls the terms and conditions of employment when
- 4 you play at a bar mitzvah, other than a 13 year old's whim?
- 5 A Typically, when you're freelancing in that setting where
- 6 there is no agreement in place, you're playing in a band that
- 7 everyone is a union member, and you're following the wages and
- 8 working conditions from the local scale.
- 9 Q Are there times when you don't play under the scale?
- 10 A Don't play at scale?
- 11 Q Yeah.
- 12 A Very rarely. It would have to be something very artistic.
- 13 Q So, to your knowledge, you're a very popular freelance
- 14 musician, is that correct?
- 15 A Correct.
- 16 Q There are other players who perhaps not as busy as you are
- 17 working at scale?
- 18 A Who aren't as busy as me, working at scale?
- 19 Q Yeah, who take jobs that aren't at scale.
- 20 A Oh, aren't at scale, I'm sure that happens all the time.
- 21 Q Is there anybody you know of who is as busy as you are in
- 22 the City of Boston?
- 23 A Oh, yeah, there's other people.
- 24 Q More than two dozen?
- 25 A Two dozen?

- 1 Q Yeah.
- 2 A Specifically, with what I do?
- 3 Q Yeah. Tell the hearing officer how many instruments you
- 4 play.
- 5 A I play woodwind instruments. I play a lot of woodwind
- 6 instruments.
- 7 Q Can you just indulge me?
- 8 A All the saxophones, clarinet, bass clarinet, flute,
- 9 piccolo, alto flute, so it's --
- 10 Q When you say all the saxophones, just for the record --
- 11 A Soprano, alto, tenor, baritone.
- 12 Q We talked over each other. Four, baritone, Tenor, alto,
- 13 and soprano?
- 14 A Those are the saxophones, yeah.
- 15 HEARING OFFICER BEDE: All right, let the record show the
- 16 hearing officer is duly impressed.
- MR. TELEGEN: No further questions.
- 18 HEARING OFFICER BEDE: Any redirect?
- 19 MR. DUMONT: No redirect.
- 20 HEARING OFFICER BEDE: All right, you may step down.
- 21 Thank you.
- 22 THE WITNESS: Thank you.
- 23 (Witness excused.)
- 24 HEARING OFFICER BEDE: Are there any further witnesses
- 25 that either party intends to call?

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- 1 MR. TELEGEN: I don't. Again, I would appreciate it if
- 2 the Union would produce the other two collective bargaining
- 3 agreements.
- 4 HEARING OFFICER BEDE: Does the Union have the other
- 5 collective bargaining agreements at hand?
- 6 MR. DUMONT: The Union does not.
- 7 HEARING OFFICER BEDE: All right, if they aren't here,
- 8 they aren't here.
- 9 MR. TELEGEN: Is Pamphlet B here?
- 10 MR. DUMONT: No, it's on my computer, all 90 pages of it.
- 11 MR. TELEGEN: Well, I'm sure the hearing officer will be
- 12 willing to hold the record open for producing those contracts
- 13 or Pamphlet B, till the end of the day?
- 14 MR. DUMONT: I'm not inclined. I'm content with what I
- 15 put on. If they want it --
- MR. TELEGEN: That's fine. If the Union is not going to
- 17 produce it, the Union is not going to produce it, and the
- 18 record is clear they're not producing it. Fine.
- 19 HEARING OFFICER BEDE: All right.
- 20 MR. TELEGEN: Because I'm fine, if that's the answer on
- 21 the record.
- 22 HEARING OFFICER BEDE: Okay. Well, we are on the record
- 23 and I don't believe that any issues have been resolved during
- 24 the hearing, and I believe that the parties' positions remain
- 25 what they were at the beginning of the hearing. Is that

- 1 correct?
- 2 MR. DUMONT: That's correct.
- 3 HEARING OFFICER BEDE: In the event an election is
- 4 directed, I would like to discuss the election details. The
- 5 Petitioner, when they filed the petition, said the best way to
- 6 conduct an election would be by mail ballot. Is that still the
- 7 Petitioner's position?
- 8 MR. DUMONT: I think, at this point, the answer is yes,
- 9 since we have not heard whether the venue is going to hire
- 10 local musicians in April. If they were, then I think in-person
- 11 would make sense. But we have not been able to nail that down.
- 12 HEARING OFFICER BEDE: Does the Petitioner have any
- 13 position on when the optimum time to send out those mail
- 14 ballots would be?
- MR. DUMONT: No.
- 16 HEARING OFFICER BEDE: Understanding that the Employer
- 17 believes there should not be an election at any time, does the
- 18 Employer have any comment on what the election details would be
- 19 should an election be directed?
- 20 MR. TELEGEN: Should be at the Wang Theatre. My first
- 21 choice would be next time all the bargaining unit members are
- 22 employed. It seems like a logical time to find out who they
- 23 want to have represent them, since they would all be there and
- 24 we know who is there.
- 25 HEARING OFFICER BEDE: And when would the next time that

- 1 they would all be employed be, expected to be?
- 2 MR. TELEGEN: I don't know, is the answer.
- 3 HEARING OFFICER BEDE: But were there a direction of
- 4 election elsewise, we could make a location available at a time
- 5 and place convenient to the Board.
- 6 HEARING OFFICER BEDE: If there were to be a directed
- 7 election, who would be the Employer's onsite representative?
- 8 MR. TELEGEN: I don't know, at this time.
- 9 HEARING OFFICER BEDE: Petitioner, if an election were
- 10 directed, would you wish to go forward regardless of what that
- 11 unit were directed to be, or are there any units that you know
- 12 you would not want to represent?
- MR. DUMONT: No, we would be prepared to go forward.
- 14 HEARING OFFICER BEDE: All right. The regional director
- 15 will issue a decision in this matter as soon as practical and
- 16 will immediately transmit the document to the parties and their
- 17 designated representatives by email, facsimile, or by overnight
- 18 mail if neither an email address or a facsimile number is
- 19 provided.
- 20 If an election is directed, the Employer must provide the
- 21 voter list. To be timely filed and served, the voter list must
- 22 be received by the regional director and the parties named in
- 23 the direction within two business days after the issuance of
- 24 the direction, unless a longer period based on extraordinary
- 25 circumstances is specified in the decision and direction of

- 1 election. A certificate of service on all parties must be
- 2 filed with the regional director when the voter list is filed.
- 3 The region will no longer serve the voter list.
- 4 The Employer must submit the voter list in an electronic
- 5 format approved by the General Counsel unless the Employer
- 6 certifies that it does not have the capacity to produce the
- 7 list in the required format. The list must be filed in common,
- 8 every day, electronic file formats that can be searched.
- 9 Accordingly, unless otherwise agreed to by the parties -- can
- 10 we go off the record for a second? Sorry.
- 11 (Pause off the record from 1:07 p.m. to 1:07 p.m.)
- 12 HEARING OFFICER BEDE: All right, back on.
- The first column of the list must begin with each
- 14 employee's last name and the list must be alphabetized, overall
- or by department, by last name. Because the list will be used
- 16 during the election, the font size of the list must be the
- 17 equivalent of Times New Roman 10 or larger. That font does not
- 18 need to be used, but the font must be that size or larger.
- 19 The Board stated that it is presumptively appropriate for
- 20 the Employer to produce multiple versions of the list where the
- 21 data required is kept in separate databases or files, so long
- 22 as all of the lists link the information to the same employees,
- 23 using the same names.
- 24 If the Employer provides multiple lists, the list used at
- 25 the election will be the list containing the employees' names

- 1 and addresses. The list must include the full names, work
- 2 locations, shifts, job classifications, and contact
- 3 information, including home addresses, available personal email
- 4 addresses, and available home and personal cellular telephone
- 5 numbers of all eligible voters.
- 6 The Employer must also include in a separate section of
- 7 that list the same information for those individuals the
- 8 parties have agreed will be permitted to vote subject to
- 9 challenge, or those individuals who according to the decision
- 10 and direction of election will be permitted to vote subject to
- 11 challenge.
- 12 I know that the Employer's position is that there should
- 13 be post-hearing briefs. Is that the Petitioner's position?
- 14 MR. DUMONT: I won't oppose it. It's not my position.
- 15 HEARING OFFICER BEDE: The regional director has concluded
- 16 that briefs may be filed and they will be due by the close of
- 17 business on 5:00 p.m., next Tuesday, January 19th. They may be
- 18 filed by efiling on the Board's web site, by mail, or hand
- 19 delivery, but not by fax.
- 20 Would either party like to make an oral argument now as we
- 21 close the record?
- 22 MR. TELEGEN: No, but I'd like to make a statement before
- 23 you close the record.
- 24 HEARING OFFICER BEDE: All right. Go ahead, make your
- 25 statement.

- 1 MR. TELEGEN: I know you travel by script, as the hearing
- 2 officer, and I appreciate the need for that. The Board's
- 3 normal practice in respect to what people commonly call
- 4 excelsior list, as amended by the Board's most recent
- 5 regulations, makes absolutely no sense in this case.
- 6 Assuming that ultimately the regional director orders an
- 7 election, I don't know yet what the frame on the universe of
- 8 employees will be. I know for certain that none of the
- 9 employees who have been employed by my client within the last
- 10 14 months. I know that the Union has current information on
- 11 presumably all the people that might be part of the bargaining
- 12 unit. I would ask that in this case the Union be ordered to
- 13 produce an excelsior list providing the names, the current
- 14 addresses, the email addresses of any employee if the Board --
- 15 if the region should order an election.
- 16 HEARING OFFICER BEDE: Okay. You have said your piece.
- 17 The regional director will see that in the transcript and will
- 18 respond accordingly.
- 19 MR. TELEGEN: I'm sure.
- 20 HEARING OFFICER BEDE: Is there anything else that we need
- 21 to discuss before we close the record?
- 22 (No response.)
- 23 HEARING OFFICER BEDE: All right, the parties are reminded
- 24 that they should request an expedited copy of the transcript
- 25 from the court reporter. Late receipt of the transcript will

- 1 not be grounds for an extension of time to file briefs. And
- 2 the hearing will be closed.
- 3 (Whereupon, at 1:11 p.m., the above-entitled matter was
- 4 closed.)

$\underline{C} \ \underline{E} \ \underline{R} \ \underline{T} \ \underline{I} \ \underline{F} \ \underline{I} \ \underline{C} \ \underline{A} \ \underline{T} \ \underline{E}$

This is to certify that the attached proceedings done before the NATIONAL LABOR RELATIONS BOARD REGION ONE

In the Matter of:

THE WANG THEATRE, INC., d/b/a CITI PERFORMING ARTS CENTER,

Employer,

and

BOSTON MUSICIANS ASSOCIATION, a/w AMERICAN FEDERATION OF MUSICIANS, LOCAL UNION NO. 9-535, AFL-CIO,

Petitioner.

Case No.: 01-RC-166997

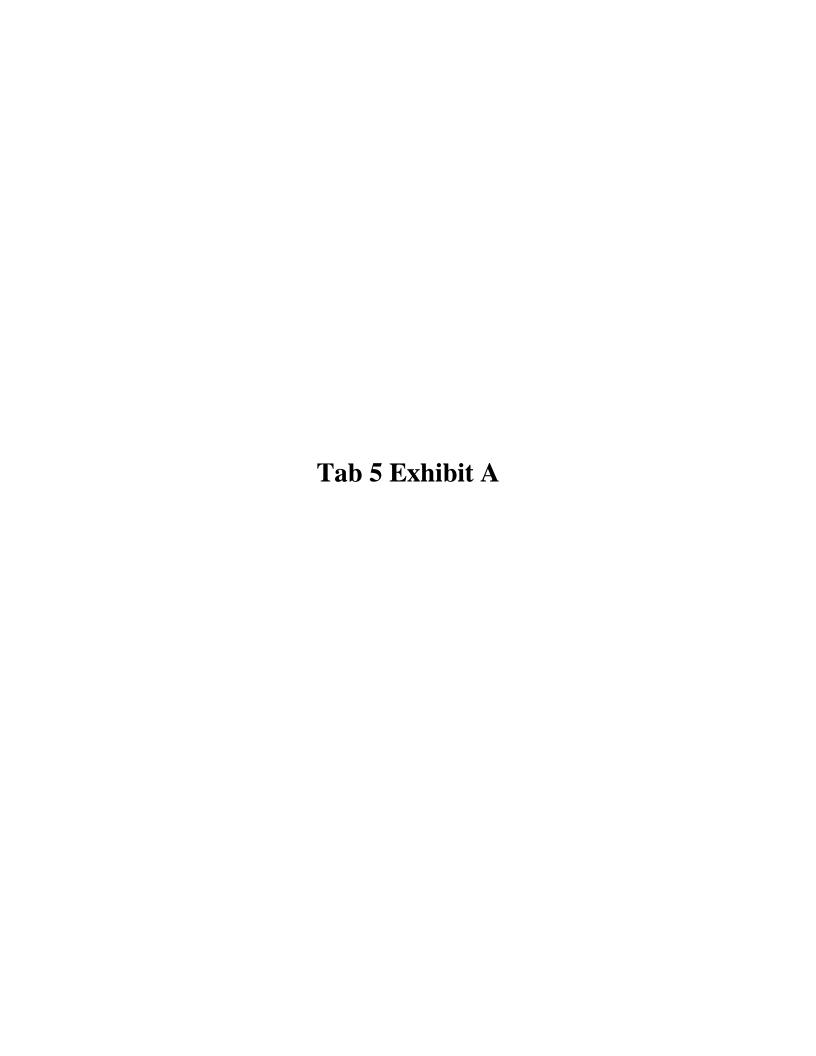
Date: January 13, 2016

Place: Boston, Massachusetts

Were held as therein appears, and that this is the original transcript thereof for the files of the Board

Official Reporter

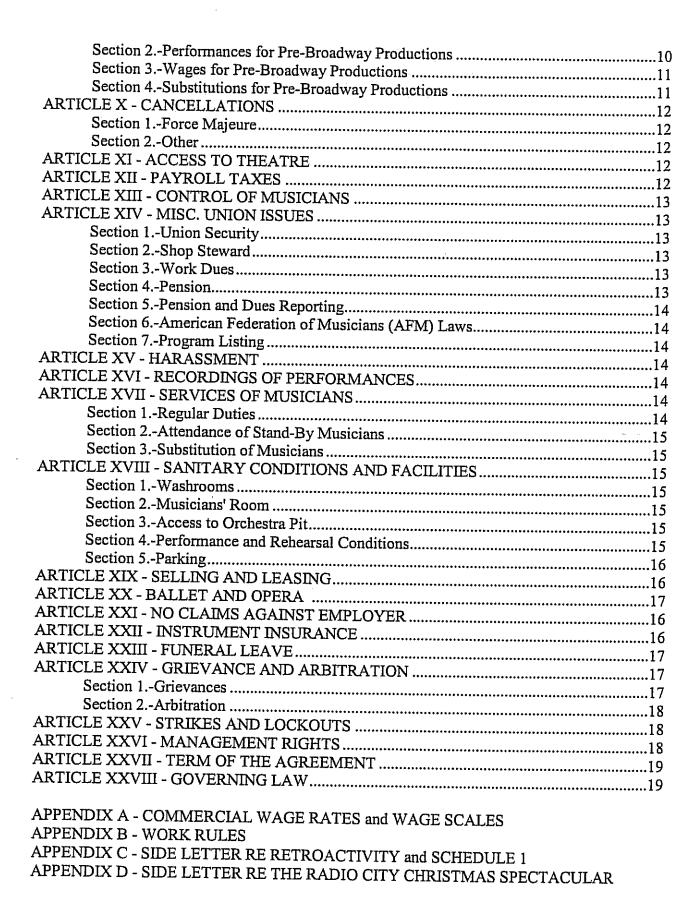
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WANG THEATRE, INC. AND BOSTON MUSICIANS' ASSOCIATION AMERICAN FEDERATION OF MUSICIANS LOCAL 9-535 September 6, 2004 – September 2, 2007

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APPENDIX __ - SIDE LETTER (DECEMBER 13, 2004) RE STAFFING WAIVER

ARTICLE I - PRELIMINARIES

AGREEMENT made on this day of December 2004, and entered into at Boston, Massachusetts, by and between WANG THEATER, INC., 270 Tremont Street, Boston, Massachusetts, a Massachusetts corporation formed pursuant to Chapter 180 of the Massachusetts General Laws, hereinafter referred to as the EMPLOYER, and BOSTON MUSICIANS' ASSOCIATION, LOCAL 9-535, AMERICAN FEDERATION OF MUSICIANS, 130 Concord Ave., Belmont, Massachusetts, an unincorporated association, hereinafter referred to as the UNION.

WITNESSETH: Whereas the parties desire to establish a collective bargaining relationship and to set forth the terms and conditions of employment of Employees (hereinafter referred to as "Musicians") during the three (3) year period covered by this Agreement;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained the parties agree as follows:

- 1. During the life of this Agreement, the Union will permit its members to accept employment under the terms and conditions set forth herein.
- 2. The Employer will continue to employ all Musicians required under this Agreement.

ARTICLE II - SCOPE OF AGREEMENT

Section 1. Application.

- A. This Agreement constitutes the only existing Agreement between the Employer and the Union, and all previous Agreements are hereby superseded.
- B. The terms of this Agreement shall apply to the following categories of performances at the Theater, and not to any other categories of performances or events thereat:
 - 1. Musical and Operetta: A presentation with live music containing more than twenty-five (25) minutes of live music shall be classified either as a "Musical" or "Operetta". In the event of a dispute as to the classification of such a presentation, either party may invoke the grievance and arbitration procedures of Article XXIV;
 - 2. Touring Opera or Ballet: Any touring opera or ballet company other than as provided in paragraph C(3) of this Section;
 - 3. Resident opera defined as any opera, grand or chamber, presented by or in association with the Employer and originating within the Boston Metropolitan area;

- 4. Miscellaneous other presentations defined as individual artists and/or groups which fall outside the above categories and which do not travel under an Actor's Equity Association contract. Private functions are not to be included in this category; and
- 5. Private Functions.
- C. Notwithstanding the foregoing, the following categories of performances at the Theater shall be excluded from the scope of this Agreement:
 - 1. Presentations by organizations with which the Union has an existing collective bargaining agreement, provided that the presentations are covered by that agreement.
 - Non-professional college or amateur productions, provided however that Local 9-535 musicians who may be employed for such productions shall be compensated in accordance with Wage Scale VI of the Local 9-535 Bylaws;
 - 3. Touring opera companies, opera productions or ballet companies touring with their own orchestras, such as the Metropolitan Opera's annual tour;
 - 4. Any presentation requiring twenty-five minutes or less of live music;
 - 5. Performances limited to the use of music created spontaneously by electronic means, not scored and committed to tape, such as music by chance;
 - 6. Performances which require instruments not played competently by any member of the Union;
 - 7. Performances in which instruments are played by members of the speaking cast as an integral part of the presentation; and
 - 8. Private parties and commencements (not including stage shows).

Section 2. Parties.

- A. This Agreement is binding upon the Employer and its successors, the Union and its successors and those Union members accepting employment with the Employer as described hereinabove.
- B. The Employer agrees that in the event that it licenses or leases the Theater for theatrical or musical purposes within the scope of this Agreement, this Agreement will be binding upon the licensee or lessee.

ARTICLE III - WORK WEEK

A Work Week shall consist of eight (8) performances within a period of six (6) consecutive days, Monday through Sunday. If there are less than eight (8) performances within a Work Week, payment shall be made at the single performance rate. The requirement for consecutive days is waived for the week of Christmas, Thanksgiving, Fourth of July and New Year's Eve or New Year's Day.

Rehearsals for presentations shall not be considered part of the work week except during an opening week. Three (3) hour rehearsals or three (3) hour dress rehearsals may be substituted in lieu of performances in an opening week. If rehearsals are counted as performances during an opening week, overtime performance rates shall apply to rehearsals in excess of three (3) hours.

Performances in addition to eight (8) per Work Week or a performance on a seventh consecutive day shall pay 150% of the pro rata performance rate. However, if a performance on a seventh consecutive day occurs within either the first or the last thirteen (13) days of a presentation (but not both), and is attributable to either first or final week scheduling demands, 150% payment shall not be required. The above proviso can be used only once during each engagement.

ARTICLE IV - NUMBERS OF MUSICIANS

Section 1. Staffing.

For presentations classified as a Musical, the Theatre shall employ the number of Local 9-535 Musicians required by the show (not to include non-playing Conductor traveling with the show) for the current United States tour or Production. The number of local Musicians may be reduced by no more than 50% of the total required to accommodate for musicians traveling with the show. In the case of a Playing Conductor, that musician shall count as one of the travelers. A Local 9-535 Musician shall be defined as one who has a permanent residence, or has regularly performed services within the jurisdictional boundaries of the Boston Musicians Association Local 9-535 for at least twelve months immediately preceding employment, subject to exception by Local 9-535 officers. In the event that no Local 9-535 member is available to fulfill a specific part, Employer shall be entitled to fill the part with a non-member.

There shall be no requirement to hire local Musicians for self-contained concerts and productions such as "SARAFINA" or "BUDDY" where Musicians are an integral part of the show.

Section 2. Pamphlet B.

Musicals traveling under an American Federations of Musicians (AFM) Pamphlet B Agreement shall be allowed, though not required, to invoke Rule 24 – Local Minimums as it exists in the current Pamphlet B Agreement or as modified hereafter. Current Pamphlet B

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language shall be attached as Appendix G to be modified as needed when successor Pamphlet B Agreement is ratified.

Section 3. <u>Virtual Orchestra Staffing.</u>

For a Musical presentation that regularly operates a "Sinfonia" or any other virtual orchestra machine during performances, the following staffing obligations shall apply.

- A. For non-Pamphlet B Musical Presentations, the Employer shall employ the number of Local 9-535 Musicians required by the show (not to include non-playing Conductor traveling with the show) for the current United States tour or Production. The number of local Musicians may be reduced by no more than 50% of the total required to accommodate for musicians traveling with the show; but provided however, that in no event shall less than five (5) local musicians be employed.
- B. For a Musical presentation traveling under an American Federations of Musicians (AFM) Pamphlet B Agreement (hereinafter, "Pamphlet B Musical Presentation"), not less than five (5) musicians, to include all traveling and local musicians (but not to include non-playing Conductor traveling with the show), shall be engaged for the presentation.

Section 4. Touring Ballet, Touring Opera and Miscellaneous Other Presentations.

For presentations classified as touring ballet or touring opera as well as miscellaneous other presentations including "Star Attractions" (e.g., Donny Osmond) that are not configured to travel with "regular travelers," i.e. musicians directly employed by the ballet, opera or attraction, only members of Local 9-535 shall be engaged to complete the orchestra.

Section 5. Waiver.

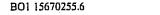
In the event that the Employer wishes to request relief from the requirements of this Article, the Employer shall use best efforts to make said request no later than two weeks prior to the first service. A request for relief from the staffing set forth in this ARTICLE IV must be heard by the President in consultation with the Theatre Committee of Local 9-535. The decision of the President and Theatre Committee shall be subject to the Grievance and Arbitration provisions of this Agreement. Local 9-535 shall respond no later than five business days from the time said request is received.

ARTICLE V - REGULAR PERFORMANCES

(See Addendum A for Basic Performance Rates)

Section 1. Length of Performance Call.

Performances and Dress Rehearsals shall be 3-1/4 hours measured from 15 minutes prior to advertised curtain time, include an intermission per Section 5 herein, and be subject to applicable overtime rates and conditions.



Section 2. Performance Overtime.

The time periods set forth herein shall be measured from 15 minutes prior to advertised curtain time.

- a. Until midnight: 150% of the applicable wage rate measured in 15-minute segments.
- b. After midnight: 200% of the applicable wage rate measured in 15-minute segments.

Section 3. Midnight and Holidays.

Performances on Christmas Eve and New Year's Eve shall pay time and one-half (150%) commencing at 5 p.m. or later. Performances at midnight shall pay \$21.22 additional per Musician.

Section 4. Single Performance Rate.

If a show opens in the middle of the week, Musicians shall be paid the single performance rate. However, the amounts paid under the single performance rate for less than eight (8) performances during anyone week, exclusive of overtime, shall not exceed the Musicians' weekly wage rate.

Section 5. Intermission.

There shall be at least one fifteen (15) minute intermission during a performance or dress rehearsal. Any omission of the required intermission during a performance or dress rehearsal shall entitle each Musician engaged for that performance or dress rehearsal to an additional ten dollars (\$10.00) per omitted intermission. Should a performance of unusual length or execution be scheduled, the Employer may request a modification of this provision, which shall not be unreasonably denied. If there is no intermission but the Musicians can leave the pit (e.g. Chorus Line and Man of La Mancha), no additional compensation shall be paid.

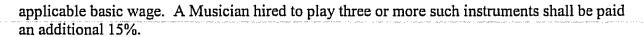
ARTICLE VI - PREMIUM PAYMENTS

Section 1. Principal Pay.

The Employer shall provide a principal pay pool equal to forty percent (40%) of the thencurrent Musician wage to be allocated, at the discretion of the Union, among the Musicians who are engaged to play in the production.

Section 2. Midi Synthesizer Premium.

A Musician engaged to play one or two electronic musical devices (including midi's, synthesizers, samplers, keyboards, modules or other connecting devices) or an acoustic keyboard in addition to one electronic musical device shall be paid an additional 25% of the



Section 3. Instrument Maintenance for Harp.

Harpists who provide their own instrument shall be paid an additional \$50.00 per week.

Section 4. Doubling.

Any Musician required to double shall receive the following percentages in addition to regular rates:

First double: 20% additional Second double: 15% additional

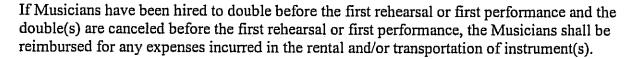
Third & subsequent: 10% additional for each

Doubling percentages are based on minimum applicable rates and shall apply to all categories of musical services. Doubling percentages shall not exceed 75% additional compensation.

The following instrument combinations within the noted respective groups shall NOT be considered as doubles:

- 1. Piano and Celeste
- 2. Organ and Celeste;
- 3. A and Bb Soprano Clarinets;
- 4. Bb, C and D Trumpets;
- 5. Timpani;
- 6. Latin Instruments: Cabasa, Claves, Maracas, Guiro, Shakers, Congas, Bongos, Timbales, Quipada de Burro, Boobams, Tumba, etc.;
- 7. Drummer's outfit, consisting of bass drum, tom toms, snare drum, pedal cymbals (high hat), gongs, single chime, bells, piatti, woodblock, snare traps, cymbals and small traps (tambourine, triangle, wood block, bell tree, mark tree, cow bell, ratchet, sleigh bells, doorbell, temple blocks, whistle, ratchet, etc.).
- 8. Mallet Instruments: Including xylophone, vibraharp, marimba, chimes, soprano bells, glockenspiel, or any other diatonic set. The percussionist may play any two of these mallet instruments. For each additional mallet instrument played after these two, a doubling fee will be paid.





If doubling begins with a rehearsal and is subsequently canceled during the rehearsal period, Musicians must receive the appropriate doubling percentages for any services performed on the canceled double(s) plus any costs of rental and/or transportation of instruments.

After a show opens, one week's notice shall be required for cancellation of a double or doubles. Musicians must receive the appropriate doubling percentage for this period and must be reimbursed for any costs of rental and/or transportation of instruments.

The Grievance Procedure will be resorted to in the event of a dispute.

Section 5. Instrument Cartage.

The Employer agrees to continue in effect during the life of this Agreement the past practice of reimbursing Musicians for the costs of transporting instruments not reasonably capable of personal transport, including, without limitation, harp, timpani, mallet percussion, and large amplifiers.

Section 6. Playing On Stage or in Costume.

Any Musician required to play outside the pit or in view of the audience shall receive ten (10) percent per performance/week in addition to the applicable rates set forth herein. Any Musician required to play outside the pit and in costume shall receive a total of twenty (20) percent per performance/week in addition to applicable rates. A "costume" shall be defined as anything other than a suit or tuxedo.

ARTICLE VII - REHEARSAL CONDITIONS (See Article IX for Pre-Broadway Production Work) (See Appendix A for Rates)

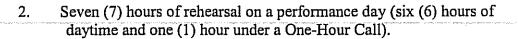
Section 1. Rehearsal Time Span.

A first rehearsal may not begin earlier than 9:00 a.m., and shall be a three-hour minimum call. Regular rehearsals shall not exceed three (3) hours. If there is a one-hour break between a first and a second rehearsal, the second rehearsal call shall be for a minimum of two (2) hours. If more than a one-hour break occurs between two rehearsals on the same day, the second rehearsal shall be for a minimum of three (3) hours. The regular rehearsal day shall end at 6:00 p.m..

It is understood by the parties that this and subsequent Sections in this ARTICLE permit a total of:

1. Nine (9) hours of rehearsal on a non-performance day (six (6) daytime and three (3) evening hours), or, a total of





Section 2. Sound Check Rehearsals.

A sixty-minute sound check rehearsal paid at one-third of the applicable pro-rata performance rate, ninety minute sound check rehearsal paid at one-half of the applicable pro-rata performance rate or a two hour sound check rehearsal paid at two-thirds of the applicable pro-rata performance rate sound check rehearsal may be called before a performance. Such rehearsal must end no later than one-half hour before the beginning of a performance. No services of any kind shall be required of Musicians during this half-hour prior to a performance.

Section 3. Talk-Over Rehearsals.

A Talk-Over rehearsal is permitted either during the half hour immediately prior to a performance or immediately following the conclusion of a performance (until midnight), and shall pay the applicable pro-rata performance straight-time rate. A Talk-Over is not permitted prior to a performance if there has been a One-Hour call prior to the same performance.

Section 4. Open/Dress Rehearsals.

Open/Dress rehearsals shall not exceed three (3) hours (including a fifteen (15) minute break) and shall be counted as a performance or may be substituted for a performance. Dress rehearsals shall be $3\frac{1}{2}$ hours in the opening week, or in the opening preview week of a Break-In show. Any omission of an intermission at an open or dress rehearsal shall require payment to each Musician of an additional \$10.00 for each omission.

Section 5. One-hour Rehearsal Call.

A one-hour rehearsal may be called before a performance, but only after a show has opened. Such rehearsal must end one-half hour prior to a performance and will pay one-third of the applicable performance rate.

Section 6. Rehearsals Extending Beyond 6p.m.

A rehearsal that extends beyond 6:00 p.m. shall pay double the applicable rate. If a rehearsal extends beyond 7:00 p.m., the entire rehearsal shall pay the applicable performance rate.

Section 7. Evening Rehearsal Call.

An evening rehearsal starting at 6:00 p.m.or later shall not exceed three (3) hours and shall pay the applicable single performance rate.

Section 8. Daytime Rehearsal Overtime.

Overtime for day rehearsals shall pay 150% of the hourly daytime rehearsal rate in one-half hour increments.



Section 9. Overtime Beyond Midnight.

Overtime beyond midnight shall pay 200% of the regular rehearsal rate in one-half hour increments.

Section 10. Rehearsals at Midnight.

Rehearsals starting at midnight shall pay the applicable per hour performance overtime rate with a two (2) hour minimum call.

Section 11. Rest Periods.

Five (5) minutes of each hour shall be allotted for a break. Any omission of a break shall entitle each Musician to an additional \$6.00 for each omission.

Section 12. Single Rehearsal Pianist.

A single rehearsal pianist shall be paid \$2.00 per hour in addition to the regular rehearsal rate with a minimum 3 hour call no later than midnight. After midnight the rate shall be \$17.00 per half-hour or less.

Section 13. Calling and Canceling.

After a show has opened, reasonable notice must be given of any additional rehearsal(s) in order that Musicians may arrange their professional schedules. Except as provided for in Article XI. Cancellations, at least 48 hours notice must be given to cancel a rehearsal.

ARTICLE VIII - USE OF LIVE MUSIC

Section 1. No Music.

A presentation using no music in any part of the theatre shall not be required to employ Musicians.

Section 2. Records and Tapes.

Recorded music shall not displace Local 9-535 Musicians for Musicals.

Section 3. Disputes.

Any dispute about the nature and extent of recorded music used or the number of Musicians to be employed may be grieved by either party. (ARTICLE XXIV)

Section 4. Notification.

The Employer shall give Local 9-535 reasonable notice in advance of the first performance of any Musical in which recorded or taped music is to be used.



ARTICLE IX - PRE-BROADWAY PRODUCTION WORK

A Pre-Broadway Production shall consist of all work related to an attraction which is being mounted, rehearsed and originally performed where, at the time that such work commences on the attraction at the Theatre, the attraction has been scheduled for a sit-down engagement on Broadway and is one of the first three stops on a Pre-Broadway tour. These terms shall be effective during any and all rehearsals, performances or other calls (including preview and press performances) from the inception of a Pre-Broadway Production through its closing performance at the Theatre.

Section 1. Rehearsals for Pre-Broadway Productions.

- A. Scheduling When actors and Musicians are rehearsing together, all rehearsal hours and breaks for Musicians shall coincide with rehearsal hours and breaks for performers and actors as set forth in the applicable, current Agreement between Actors Equity Association and the League of American Theaters and Producers or any other applicable producer organization ("the Equity Agreement"). No other rehearsal breaks shall be required. To the extent consistent with the rehearsal hours and breaks set forth in the Equity Agreement, the Employer may determine, at its discretion, rehearsal schedules and shall have no restrictions concerning the number or timing of daily rehearsals.
- B. Notice The Employer shall give at least one (1) week notice of rehearsal schedules.

 The Employer shall give at least 48 hours notice of rehearsal changes or cancellation.

 If less than 48 hours' notice of a rehearsal change is given, any Musician may send a substitute.
- C. Substitution for Performances Prior to the official opening, up to three (3) three-hour rehearsals may be substituted for scheduled performances at the performance rate.
- D. Overtime All Rehearsal overtime hours shall be compensated at one and one half times the applicable hourly rate identified in Section 3 herein. Overtime hours shall be defined as all rehearsal hours in excess of eight (8) per day as well as any rehearsal hours after 7:00 p.m. Under no circumstances will overtime be paid on overtime, nor shall there be any other form of pyramiding or compounding of overtime.

Section 2. Performances for Pre-Broadway Productions.

- A. Previews through the Official Opening Night Preview Performances during and up through the Official Opening night shall be based on a four (4) hour call, inclusive of the 15 minute call prior to curtain, no later than midnight. Overtime shall apply thereafter.
- B. The Week Post-Opening Night After the Official opening night, the performance length for the remainder of the first week of the "Break-In" show shall be 3 1/2 hours. Overtime shall apply thereafter.



- C. All Other Performances After the conclusion of the Official opening week, all performances exceeding 3 1/4 hours are subject to overtime.
- D. Performance Overtime Performance overtime shall be paid based on the wages in Section 3 herein utilizing the formulas in Article V, Section 2.

Section 3. Wages for Pre-Broadway Productions.

- A. Rehearsal Wages All rehearsal wages for Musicians on a Pre-Broadway Production shall be 85% of the basic wage scale as described in the Collective Bargaining Agreement.
- B. Performance Wages All performance wages for Musicians on a Pre-Broadway Production shall be 85% of the basic wage scale as described in the Collective Bargaining Agreement for weeks one (1) through seven (7) of a Pre-Broadway Production. Week one (1) is defined as the first week of paid performances. Beginning with the eighth (8th) week of performances the full basic scale wages as described in the Collective Bargaining Agreement shall apply.
- C. Conductors Wages In the event that the Conductor is working under this Agreement, he shall be paid the Pre-Broadway Production performance rate plus an additional 50% until the production's first paid public performance.
- D. The Rehearsal Pianist shall be paid an hourly rate of 85% of the wages as described in the Collective Bargaining Agreement.

Section 4. Substitutions for Pre-Broadway Productions.

Musicians may not utilize substitutes during the following periods:

- A. All pre-production activities (i.e. before first paid public performance)
- B. Rehearsals except as provided for in Section 1.B.
- C. Preview performances (limited to the first two weeks of the run.)
- D. First week of regularly scheduled paid performances.
- E. Press performances during the first month of regularly scheduled performances. Notice of press performances must be posted at least two (2) weeks in advance.

ARTICLE X - CANCELLATIONS

Section 1. Force Majeure.

In the event that the Employer is unable to fulfill any of its obligations under this Agreement because of fire, flood, warnings, threats, acts of terrorism, accident, failure of transportation, power failure, labor dispute, strike, lockout, riot, act of God, war, the public enemy, or for any other similar cause which could not reasonably have been anticipated or prevented by the Employer, the Employer shall notify any officer of the Union as soon as possible, in which event the Musicians shall not be entitled to any compensation for the time during which said services shall not, for such reasons, be rendered. Such notice shall, whenever feasible, be in writing. Should any of the foregoing conditions continue for a period of ten (10) days or more after such notice to the Union, either party may, in writing, terminate the Musicians' employment with the Employer, and the Employer will pay for all services rendered to date.

Section 2. Other.

Musicians engaged for rehearsals or performances of presentations by the Employer shall be given not less than seven (7) days' notice of any cancellation not considered a cancellation due to Force Majeure. Where the Employer has provided such Musicians with at least seven (7) days' notice of cancellation, the Employer shall not be liable for payment of any nature. Where the Employer has not provided such Musicians with at least seven (7) days' notice of cancellation, the Employer shall be liable for payment of all rehearsals and performances scheduled within seven (7) days of the date a cancellation notice is given. In no event, however, shall the compensation due under this clause exceed the length of the original engagement. This clause is intended to cover canceled performances only, and does not apply to Musicians who are terminated with just cause due to an inability to play the part for which they were hired.

In the event a service is canceled due to weather conditions, the Employer shall provide a minimum of four hours notice of cancellation to the Local Contractor. If such notice is not given, Musicians shall be compensated for that service.

ARTICLE XI - ACCESS TO THEATRE

The Business Representatives (President, Vice-President, Secretary-Treasurer) of Local 9-535 shall have access to the Theatre at reasonable times for visits of reasonable duration to confer with Musicians or the Employer about matters concerning this Agreement. Such visits shall not interfere with or distract Musicians from their duties or responsibilities.

ARTICLE XII - PAYROLL TAXES

The Employer shall withhold and pay the Employer's share of any and all Federal or State payroll taxes attributable to the employment of Musicians under the terms of this Agreement.



ARTICLE XIII - CONTROL OF MUSICIANS

The Employer shall at all times have complete control of the services rendered by its Musicians under this Agreement. The inability of any Musician to perform any musical services for which s/he has been hired is subject to proven detention by sickness, accident, failure of public transportation, riot, strike, epidemic, act of God, or any other legitimate condition beyond the control of the Musician.

ARTICLE XIV - MISC. UNION ISSUES

Section 1. Union Security.

To the extent permitted by applicable law, all Musicians covered by this Agreement must be members in good standing of Local 9-535, American Federation of Musicians (AFM). However, if the employment provided for hereunder is subject to the Labor Management Relations Act of 1947, all Musicians who are members of Local 9-535 when their employment commences hereunder shall be continued in such employment only as long as they continue in such good standing. All other Musicians covered by this Agreement shall, on or before the thirtieth (30) day following commencement of their employment, or the effective date of this Agreement, whichever is later, become and continue to be members in good standing of Local 9-535, AFM. The provisions of this paragraph shall be of no force or effect unless permitted by applicable law.

Section 2. Shop Steward.

Whenever members of Local 9-535 are engaged as an orchestra under the terms of this Agreement, the Union shall designate from the members one person who shall represent the orchestra as Shop Steward. The Shop Steward shall be authorized to bring issues to the attention of the Employer on behalf of individual Musicians or on behalf of the entire orchestra. The Union may change the designation of the Shop Steward from time to time upon due notice to the Employer.

Section 3. Work Dues.

The Union shall be permitted authorization for payroll deduction of Work Dues. The Employer agrees to withhold and submit to the Union the current work dues percentage of Musicians' total scale wages by the fifteenth day of the month following the month in which services were performed. This amount shall be transmitted by one separate check made payable to "AFM Local 9-535."

Section 4. Pension.

The Employer agrees to be bound by and accept the terms and conditions of the Agreement and Declaration of Trust creating the American Federation of Musicians-Employers' Pension Fund (AFM-EPF). The Employer further agrees to contribute on behalf of each Musician the applicable pension percentage all wages earned by each Musician performing musical services. This amount will be submitted to the Union by one separate check, made payable



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to AFM-EPF by the fifteenth day of the month following the month during which musical services were performed.

The Employer shall contribute into the American Federation of Musicians'- Employers' Pension Fund an amount equal to 10% of each Musician's gross pay on behalf of each Musician, which amount shall increase to eleven percent (11%) effective September 2, 2007.

Section 5. Pension and Dues Reporting.

The appropriate forms for the submission of work dues and pension information will be supplied by the Union and must accompany the payments, although reasonable computer equivalents such as payroll reports will be accepted.

Section 6. American Federation of Musicians (AFM) Laws.

To the extent permitted by applicable law, nothing in this Agreement shall be construed as to interfere with any duty owed by any Musician hereunder to the AFM and Local 9-535 pursuant to their existing Bylaws, rules, regulations and orders.

Section 7. Program Listing.

Subject to space limitations and other circumstances outside the control of the Employer, each Musician regularly scheduled to perform during the run of an attraction shall be afforded credit in the show's program.

ARTICLE XV - HARASSMENT

Arbitrary and undue harassment of any Musician by visiting conductors or contractors will be construed as a violation of the goodwill of this Agreement and may constitute grounds for refusal of services. In the event of a dispute arising under this Article, the parties to this Agreement will resort to the Grievance Procedure.

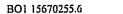
ARTICLE XVI - RECORDINGS OF PERFORMANCES

Musical services performed under this Agreement may not be recorded, reproduced, or transmitted from the place of performance in any manner or by any means whatever in the absence of a specific written agreement between the Employer and the AFM permitting such recording, reproduction, or transmission.

ARTICLE XVII - SERVICES OF MUSICIANS

Section 1. Regular Duties.

Musicians shall not be required to perform any services apart from those of a Musician. Any Musician acting as a leader or conductor, whether playing alone or with other Musicians, shall receive 150% of applicable rates.



Section 2. Attendance of Stand-By Musicians.

A Musician engaged under the live music performing provisions who is not required to play shall attend all rehearsals and performances with instrument(s) and be duly compensated. However, the Employer may, at his/her discretion, allow the Musician to leave the Theatre after the Musician has checked-in.

Section 3. Substitution of Musicians.

In the Employer's sole discretion, which discretion shall not be unreasonably exercised, substitutions of Musicians may from time to time be authorized in order to accommodate a Musician's professional schedule. The Contractor shall be responsible for selecting, approving, and breaking-in such authorized substitutes, at no additional expense to Employer.

ARTICLE XVIII - SANITARY CONDITIONS AND FACILITIES

Section 1. Washrooms.

The Employer shall provide and maintain separate, adequate and sanitary male and female washrooms for the Musicians.

Section 2. Musicians' Room.

Within a reasonable time after the execution of this Agreement, the Employer shall provide and maintain a Musicians' Room(s), with adequate coat racks, chairs and lockable locker space for the Musicians' instruments, instrument cases and clothing, and changing facilities, separate for men and women. Adequate tables for the assembling of instruments shall be provided within the Musicians' Room(s). There shall be a means of securing the area within which the Musicians' lockers and tables are maintained using the means reasonably determined by the Employer to be most feasible for this purpose. Nothing in this Agreement, however, may be construed to imply that the Employer assumes responsibility for the safekeeping of any of the Musicians' equipment or clothing except as provided in Article XXI, Instrument Insurance.

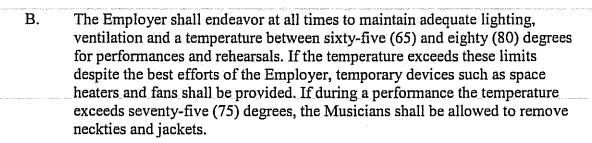
Section 3. Access to Orchestra Pit.

The Employer shall provide two means of safe and secure access and egress to the orchestra pit.

Section 4. Performance and Rehearsal Conditions.

A. The Employer shall provide and maintain chairs in the orchestra pit which are without arms, straight- backed, and padded. If a rehearsal is held outside the pit, chairs of equivalent comfort to those in the pit shall, wherever possible, be provided.





Section 5. Parking.

Should the Employer secure discounted parking near the theatre, such discounted parking shall be provided to Musicians working a performance.

ARTICLE XIX - SELLING AND LEASING

Notwithstanding any of the provisions of this Agreement, it is expressly understood and agreed that if the Employer shall lease, sublet or in any other manner dispose of the control of the theatre for any periods of time to any other persons, firm or corporation for a purpose other than Legitimate Theatre attractions, the Employer shall no longer be liable in any manner whatsoever for the performance of this Agreement, and it shall not be held responsible in any manner, either directly or indirectly for any of the acts or defaults of the person, firm or corporation who shall succeed to the operation of the Theatre. It is however further agreed that the Employer shall give thirty (30) days prior notice to the party of the second part to whom contemplation of the Theatre is leased or otherwise disposed of.

Notwithstanding any of the provisions of this Agreement, if the Employer shall for any reason lose control of the said Theatre, its responsibility thereafter shall thereupon cease.

ARTICLE XX – BALLET AND OPERA

If Opera or Ballet is presented in the Theater, it shall be subject to the Wage Scales and conditions per Wage Scale III (Ballet and Opera) of Local 9-535.

Tape recorded music may be used for any performance of ballet or opera without penalty, premium or minimum staffing (e.g., Alvin Ailey).

ARTICLE XXI - NO CLAIMS AGAINST EMPLOYER

The Employer represents that there are no existing claims of any kind against him as a result of musical services performed for him. No member of the Union shall be required to satisfy any provisions of this Agreement, or to render any services for the Employer if any such claim were unsatisfied or unpaid, in whole or in pan.

ARTICLE XXII - INSTRUMENT INSURANCE

The Employer shall provide insurance coverage on Employees' musical instruments for an amount not to exceed \$30,000 per occurrence of loss or damage caused by fire or theft



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regardless of the number of instruments involved, less a \$100 deductible. Such insurance shall only be provided for musical instruments on the Theater premises during performances and between performances on the same day (and for twenty-four hours a day for non-portable instruments during presentations).

ARTICLE XXIII - FUNERAL LEAVE

Musicians who are engaged for a production of more than four (4) weeks shall be entitled to one (1) day of Funeral Leave during each four (4) week period of the production. Funeral Leave may be used solely as a result of a death in the Musician's immediate family (parent, sibling, spouse equivalent or child). A Funeral Leave day shall be paid at the rate of seventy percent (70%) of the Musician's applicable pro rata base wage. Funeral Leave may not be accrued beyond the four-week period.

ARTICLE XXIV - GRIEVANCE AND ARBITRATION

Section 1. Grievances.

- A. A grievance, for purposes of this ARTICLE, shall be defined as a dispute between the Employer and the Union concerning the meaning or application of this Agreement, which is not already governed by a method of resolution specified elsewhere in this Agreement.
- B. Any Musician directly involved in a grievance shall seek to resolve such grievance informally through discussions with the day-to-day Manager. The Employer shall seek to resolve a grievance informally through discussions with the Union or any officer or business agent thereof capable of resolving such a grievance on the Musician's behalf.
- C. In the event that a grievance is not resolved informally as provided hereinabove, the Employer or the Union may process such a grievance as follows:

1. Step One

The grievance shall be submitted in writing by the Union to the Theatre Manager or by the Employer to the Union's Authorized Representative as soon as possible, but in no event later than ten (10) calendar days of the date the facts giving rise to the grievance occurred or could reasonably have been discovered. Such a written grievance shall be dated and signed and shall state the provisions of this Agreement involved in the grievance, an explanation of the grievance, and the remedy sought. The Theatre Manager or the Union's Authorized Representative shall respond to the grievance within five (5) calendar days. If the grievance is not then resolved to the satisfaction of the Employer or the Union within five (5) calendar days of its submission under



Step One, either party may, within five (5) calendar days thereafter, submit the grievance to Step Two.

2. Step Two

A grievance submitted for review Under Step Two shall be submitted in writing to the Employer's designated chief representative or to the President or Board of Directors of the Union. Within five (5) calendar days of the timely submission of such a grievance, the Employer and the Union, through their respective representatives, shall meet to discuss the grievance. The Employer's designated chief representative or the President or Board of Directors of the Union shall, no later than five (5) calendar days following this meeting, respond to the grievance in writing.

3. <u>Time Limits</u>

The parties may, by mutual written agreement, modify any of the time limits set forth herein.

Section 2. Arbitration.

Within ten (10) calendar days from the date on which the Step Two response is received or, due, whichever is earlier, the Union or the Employer may submit an unresolved grievance to the Boston office of the American Arbitration Association (MA) for resolution, in which event the AAA's Voluntary Labor Arbitration Rules shall apply. The administrative fees of the AAA and the fees of the arbitrator shall be borne equally by the parties. The decision of the arbitrator shall be final and binding upon the parties. However, in no event shall the arbitrator have the authority to add to, modify, or subtract from the terms and conditions specifically set forth in this Agreement.

The prescribed time limits for processing grievances shall be strictly enforced. If either the Employer or the Union fails to process a grievance to the next step within any of these time limits, the grievance shall be deemed to have been waived.

ARTICLE XXV - STRIKES AND LOCKOUTS

During the term of this Agreement, neither the Union nor its agents, nor its members, nor any Musician covered by this Agreement will authorize, instigate, aid, condone or engage in a stoppage, sympathy strike, slowdown, any other type of strike or other interference with work, or respect any picket line, and the Employer will not institute any lockout of Musicians.

ARTICLE XXVI - MANAGEMENT RIGHTS

Except as otherwise expressly relinquished or modified by provisions of this Agreement, the Employer retains all rights which it would have in the absence of such Agreement. Without



limiting the generality of the foregoing, and by way of example and not of limitation, such rights include the exclusive right to set its policy, to manage its business, to direct the working forces, to establish work rules and regulations not inconsistent with this Agreement, to determine the qualifications for and to select its Employees, to assign Employees to jobs, to increase and decrease the working forces, to determine the work content of jobs, to determine the hourly, daily and weekly schedules of work, to determine the methods, processes and means of accomplishing work; and to discipline or discharge Employees.

ARTICLE XXVII - TERM OF THE AGREEMENT

The term of this Agreement shall be for three (3) years beginning September 6, 2004 and ending September 2, 2007.

Unless written notice is given by either party to the other at least sixty (60) days and not more than ninety (90) days prior to the date of termination of a desire for change therein or to terminate same, this Agreement shall continue in effect for an additional year and from year to year thereafter, subject to termination or modification at the expiration of any such contract year upon notice in writing given by either party to the other at least sixty (60) days and not more than ninety (90) days prior to the expiration of such contract year.

Notwithstanding the above, either party may terminate this Agreement on not less than sixty (60) days written notice.

ARTICLE XXVIII - GOVERNING LAW

This Agreement and the rights and obligations of the parties contained herein shall be construed in accordance with and governed by the laws of the Commonwealth of Massachusetts unless preempted by federal law.

WANG THEATRE, INC.

By:

William C. Taylbr, Sr. Vice

President and Chief Operating Officer

Wang Theatre, Inc.

270 Tremont Street

Boston, MA 02116

AMERICAN FEDERATION OF

MUSICIANS LOCAL 9-535

By: Barbara Owens, President

130 Concord Avenue Belmont, MA 02478

617/489-6400



REGULAR RATES	9/6/04- 9/4/05	9/5/05- 9/3/06	9/4/06- 9/2/07	
Weekly Performance Rate	\$1,240.33	\$1,277.54	\$1,309.48	
Pro Rata Performance Rate	155.04	159.69	163.69	
Single Performance Rate (pro rata +10%)	170.55	175.66	180.06	
Daytime Rehearsal Rate	31.01	31.94	32.74	
Pension	10%	10%	10%1	

PRE-BROADWAY PRODUCTION RATES (85% OF REGULAR RATE)	9/6/04- 9/4/05	9/5/05- 9/3/06	9/4/06- 9/2/07
Weekly Performance Rate	\$1,054.28	\$1,085.91	\$1,113.06
Pro Rata Performance Rate	131.79	135.74	139.13
Single Performance Rate (pro rata +10%)	144.97	149.31	153.04
Daytime Rehearsal Rate	26.36	27.15	27.83
Pension	10%	10%	10% ²

BALLET & OPERA	9/6/04-	9/5/05-	9/4/06-
(Wage Scale III of Local 9-535)	9/4/05	9/3/06	9/2/07
Per Performance Rate	\$191.00	TBD	TBD

¹ Pension Rate increases to eleven percent (11%) effective September 2, 2007

² Pension Rate increases to eleven percent (11%) effective September 2, 2007

APPENDIX B

CATEGORY 1 WORK RULES

The Wang Theatre (hereinafter the "Theatre" or "Employer") shall be deemed to have just cause to discharge any Musician for any violation of Category 1 Work Rule. The following list of Category 1 offenses justifying immediate discharge is not intended to limit an arbitrator from finding just cause for an immediate discharge resulting from other types of serious misconduct.

1.0 SUBSTANCE ABUSE

No Musician may use, sell, purchase transfer or possess any illegal or controlled drugs (unless prescribed by the Musician's physician) while on duty at or performing the business of the Employer.

No Musician may be under the influence of alcohol or any illegal or controlled drugs while on duty or performing Theatre business. The use of legally prescribed medications is permitted only to the extent that the use of such medications does not adversely affect the ability of the Musician to perform job duties or the safety of the Musician or others.

1.1 HARASSMENT

No Musician shall engage in any form of unlawful harassment, including sexual, racial, religious, ethnic, sexual orientation or ethnic harassment, or harassment on the basis of any other protected classification. (Each Musician shall be obligated to abide by the complete sexual harassment policy as distributed by employer under the state and federal guidelines.)

1.2 THEFT OR WILLFUL DESTRUCTION OF PROPERTY

Musician shall steal or willfully destroy any property on Theatre's premises, including but not limited to Theatre property, or the property of its tenants, independent contractors, patrons, or other Wang Theatre Employees. No Musician shall be dishonest in the performance of his job duties, time reporting and any representation made to the Employer that concerns wages, hours or a term or condition of employment.

1.3 VIOLENCE

No Musician shall commit any act of violence while on duty at the Theatre.

No Musician shall commit any act of violence against any other Theatre Musician at any time.

1.4 GROSS INSUBORDINATION:

No Musician shall disregard the instructions of Employer, or in any other way commit an act of gross insubordination.

1.5 ABSENCE FROM A REHEARSAL CALL OR PERFORMANCE CALL:

No Musician who reports to work for a call (rehearsal, sound check or performance call) shall leave work prior to the end of the call without the express written permission of the Contractor, Conductor and Theatre Manager or his designee.

Section 1. CATEGORY 2 WORK RULES

The Employer may take progressive disciplinary action against any Musician who violates a Category 2 work rule or who commits any other type of misconduct warranting progressive discipline.

A first offense shall result in an oral warning confirmed in writing.

A second offense shall result in a written warning and/or a three (3) day suspension without pay.

A third offense shall result in immediate termination.

2.1 UNAUTHORIZED ABSENCE:

Musicians shall be subject to discipline for all unauthorized absences. Musicians may not be absent without a valid reason and shall not be absent without providing advance notification and receiving authorization.

Musicians are required to be present at the Theatre and available to perform their work duties at all times during their scheduled work hours. Musicians are expected to be at their job site ready to work at the beginning of their assigned call. If a Musician is unable to report to work on time, he or she must notify the Contractor and Theatre Manager or his designee as soon as possible, but no later than forty-eight hours prior to the start of the Musician's assigned call unless circumstances prevent such advance notification, in which case the Musician shall provide notification as soon as possible.

Musicians are expected to return from their lunch/dinner breaks and be available to resume work at the time scheduled by the Contractor or Theatre Manager.

2.2 MINOR INSUBORDINATION:

Musicians are expected to cooperate with and comply with the instructions of the Employer. Musicians are expected to comply with the instructions of the Contractor



and Conductor. In addition, Musicians are expected to cooperate with other Theatre Employees in any way that may be reasonably necessary for the successful operation of shows, events and other functions falling under the jurisdiction of Musicians.

2.3 COURTESY TOWARD PATRONS, VISITING COMPANIES AND OPERA HOUSE EMPLOYEES:

Musicians are expected to be polite and courteous to members of the public, visiting companies and other employees while on duty at the Theatre.

2.4 SMOKING

Smoking is not permitted anywhere within the Theatre.

2.5 MUSICIAN JOB PERFORMANCE

Musicians shall perform the duties of their job diligently and competently.

2.6 FOOD AND BEVERAGES

There shall be no food or beverages (water excepted) permitted in the orchestra pit.

2.7 READING IN THE PIT

Employees shall be permitted to read in the orchestra pit, provided that reading materials are discretely kept from view of audience patrons.





APPENDIX C

December 13, 2004

Barbara Owens, President Boston Musicians' Association Local 9-535, American Federation of Musicians 130 Concord Avenue Belmont, MA 02478-4035

Retroactivity

Re:

Dear Barbara:

This will confirm that the wages and benefits of the recently negotiated collective bargaining agreement between the Boston Musicians' Association, American Federation of Musicians, Local 9-535 ("Local 9-535") and Wang Theater, Inc. ("WTI"), September 6, 2004 – September 2, 2007 ("New Contract"), shall be applied retroactively to September 1, 2002. Accordingly, the wages and benefits for the first year of the New Contract (9/6/04 - 9/4/05) shall be applied retroactively from 9/1/02 to the date on which the New Contract is executed by Local 9-535 in accordance with the attached Schedule 1 to this letter. Notwithstanding the above, no retroactive wages or benefits shall be due or owing for the American Ballet Theater's run at the WTI on November 14 - 17, 2002.

Retroactive wages and benefits shall become due only upon the execution of the New Contract (including all side letters) by Local 9-535 and shall be paid within a reasonable period of time thereafter.

Sincerely,

William C. Taylor

Senior Vice President and Chief Operating Officer

ACCEPTED:

BOSTON MUSICIANS' ASSOCIATION LOCAL 9-535, AMERICAN FEDERATION OF MUSICIANS

By:

KESIDENT

Barbara Owens, President

Wang Theatre, Inc. Tremont Theatre, Inc. Wang Center Productions, Inc.

270 Tremont Street Boston, MA 02116

(617) 482-9393 FAX: (617) 451-1436 TTY: (617) 482-5757

www.wangcenter.org Nam for Bustin Oppositations



APPENDIX D

December 13, 2004

Barbara Owens, President
Boston Musicians' Association
Local 9-535, American Federation of Musicians
130 Concord Avenue
Belmont, MA 02478-4035

Re: The Radio City Christmas Spectacular ("Rockettes")

Dear Barbara:

This will confirm that during the term of the recently negotiated collective bargaining agreement between the Boston Musicians' Association, American Federation of Musicians, Local 9-535 ("Local 9-535") and Wang Theater, Inc. ("WTI"), September 6, 2004 — September 2, 2007 ("New Contract"), the parties have agreed that Article VIII, Section 2 shall not apply to any presentations of the Radio City Christmas Spectacular (the "Rockettes"). Accordingly, during the term of the New Contract, the Rockettes may play at WTI's Theater using taped music and there shall be no minimum staffing requirements or other obligations to engage local musicians.

In reaching this agreement, it is the intention of the parties not to compromise whatever positions they may wish to assert in connection with the negotiation of future collective bargaining agreements concerning the applicability of Article VIII, Section 2 to the Rockettes. Specifically, in any such future negotiation, WTI reserves the right to assert that the Rockettes is not a Musical, and Local 9-535 reserves the right to assert that the Rockettes is a Musical. Nothing contained in this side letter shall be used or construed as precedent in connection with any future dispute concerning this issue.

Sincerely,

William C. Taylor

Senior Vice President and Chief Operating Officer

ACCEPTED:

BOSTON MUSICIANS' ASSOCIATION LOCAL 9-535, AMERICAN FEDERATION OF MUSICIANS

By:

BO1 15670255.6

Barbara Owens, President

Wang Theatre, Inc. • Tremont Theatre, Inc. • Wang Center Productions, Inc.

RESIDENT

270 Tremont Street Boston, MA 02116

(617) 482-9393 FAX: (617) 451-1436 TTY: (617) 482-5757

www.wangcenter.org

Not-for-Profit Organizations





APPENDIX E

December 13, 2004

Barbara Owens, President
Boston Musicians' Association
Local 9-535, American Federation of Musicians
130 Concord Avenue
Belmont, MA 02478-4035

Re: Resident Opera

Dear Barbara:

In the event that the Wang Theater, Inc. ("WTI") produces and presents a resident opera at its Theater located at 270 Tremont Street, Boston, Massachusetts during the term of the recently negotiated collective bargaining agreement between the Boston Musicians' Association, American Federation of Musicians, Local 9-535 ("Local 9-535") and WTI, September 6, 2004 – September 2, 2007 ("New Contract"), WTI agrees that such attraction shall not use a VPO or recorded music to displace local musicians.

Sincerely,

William C. Taylor

Senior Vice President and Chief Operating Officer

ACCEPTED:

BOSTON MUSICIANS' ASSOCIATION LOCAL 9-535, AMERICAN FEDERATION OF MUSICIANS

PRESIDENT

By:

Barbara Owens, President

Wang Theatre, Inc. • Tremont Theatre, Inc. • Wang Center Productions, Inc. 270 Tremont Street Boston, MA 02116

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www.wangcenter.org

Not-for-Profit Organizations





<u>APPENDIX F</u>

December 13, 2004

Barbara Owens, President
Boston Musicians' Association
Local 9-535, American Federation of Musicians
130 Concord Avenue
Belmont, MA 02478-4035

Re: Withdrawal of Grievances

Dear Barbara:

This will confirm that the Boston Musicians' Association, American Federation of Musicians, Local 9-535 ("Local 9-535") and Wang Theater, Inc. ("WTI") have agreed to withdraw with prejudice their respective grievances concerning minimum staffing requirements for the March 2-7, 2004 production of *Oliver* and the March 12-14, 2004 production of *Grease*. No further action will be taken by either party with respect to any of these grievances.

Sincerely,

William C. Taylor

Senior Vice President and Chief Operating Officer

ACCEPTED:

BOSTON MUSICIANS' ASSOCIATION LOCAL 9-535, AMERICAN FEDERATION OF MUSICIANS

By:

BO1 15670255.6

Barbara Owens, President

Wang Theatre, Inc. • Tremont Theatre, Inc. • Wang Center Productions, Inc.

270 Tremont Street Boston, MA 02116

APPENDIX G

Pamphlet B Touring Theatrical Musicals Rule 24

Local Mimimums: April 24, 2002

- A. Upon expiration of any local agreement in effect on January 29, 1992 where there is an existing minimum number of musicians contained therein, the Local Union may continue to set minimums in collective bargaining provided that those minimums which shall not exceed sixteen (16) Local Union Musicians for Pamphlet B Touring Theatrical Musicals subject to Paragraphs B E below.
- B. For engagements of one (1) week or less, local minimums will not apply to tours that are traveling under Pamphlet B except that when local augmentation is required, local Musicians shall be employed.
- C. For engagements of more than one (1) week and up to six (6) weeks, no local agreement shall require the engagement of more local musicians than called for by the specific Pamphlet B production, minus up to five (5) Musicians traveling under this Agreement.
- D. For engagements of more than six (6) weeks, no local agreement shall require the engagement of more local musicians than called for by the specific Pamphlet B production, minus up to three (3) Musicians traveling under this Agreement.
- The Federation President of his/her designee, in consultation with the producer, E. shall establish whether the Musicians are an integral part of the show and, if so, the show shall be classified as a self-contained unit, e.g., "Bring in Da Noise, Bring in Da Funk" and "Best Little Whorehouse in Texas." In each case, local minimums shall not apply. In the event that agreement cannot be reached on this matter, the parties shall submit the dispute to final and binding expedited arbitration pursuant to the Voluntary Labor Arbitration Rules of the American Arbitration Association. (The Parties to this Agreement shall name two mutually agreeable individuals as arbitrators with the further provision that all hearings shall be held and decisions rendered by the arbitrator no more than thirty (30) days after the parties have failed to reach an agreement). In applying this provision, the Federation President and/or his/her designated representative shall determine on a case-by-case basis whether to grant requests from a Producer to count (i) a Musician(s) playing a special, unique instrument(s) (e.g., African percussion or Asian flute), and/or (ii) to deem one or more Musicians, but not the entire complement of Musicians, to be an integral part of the show (i.e., that the Musicians(s) constitute a self-contained sub unit), and thus to count such Musician(s) as a credit against any local union minimum that would apply to subparagraph C or D above. The Federation President shall act expeditiously on any such request and shall not unreasonably withhold approval. The decision of

- the Federation President shall be subject to the final and binding expedited arbitration provision set forth in subparagraph C above.
- F. The provision of Paragraphs C and D above have been entered into on an experimental basis and, after review by the parties of the experience hereunder, shall be subject to negotiations between the parties in the next round of bargaining.

THE LAW OFFICES OF

DUMONT, MORRIS AND BURKE, PC

14 BEACON STREET, SUITE 300 BOSTON, MASSACHUSETTS 02108 617-227-7272 FAX 617-227-7025

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OF COUNSEL
WILLIAM R. CAHILL, JR.*
wcahill@dmbpc.net

*ALSO A MEMBER OF THE NEW HAMPSHIRE BAR +ALSO A MEMBER OF THE MAINE BAR

November 16, 2004

Richard L. Alfred, Esq. Seyfarth Shaw World Seaport Lane Two Seaport Lane, Suite 300 Boston, MA 02210-4800

Re: Boston Musicians' Association, AFM Local 9-535 and Wang Theatre, Inc.

Dear Richard:

As per your request, the following will serve to confirm our discussion during negotiations last Friday, concerning the Wang Theatre's invocation of the "Staffing Waiver" provision that will be found at Article IV, Section 4 of the parties' collective bargaining agreement.

In that discussion, you indicated that the Wang Theatre could envision, and is concerned about, a scenario in which the Wang Theatre would be competing with the Opera House for a particular production and could be disadvantaged by the fact that the Article IV staffing language in the Wang Theatre agreement will be different than the corresponding language in the Opera House's agreement with the Boston Musicians' Association.

In response to the Theatre's concern, the Union Negotiating Committee stated its opinion that the scenario, as described by you, would be an appropriate use by the Wang Theatre of the Staffing Waiver provision and that, as such, the Wang Theatre may reasonably expect that a timely waiver request under the above-described circumstances would be granted by the Boston Musicians' Association.

Sincerely,

Gabriel O. Dumont, Jr., Counsel for the Boston Musicians Association, Local 9-535

Cc Barbara T. Owens, President



Writer's direct phone (617) 946-4802

Writer's e-mail ralfred@seyfarth.com

World Trade Center East
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December 13, 2004

Gabriel O. Dumont, Jr., Esq. Dumont, Morris and Burke, PC 14 Beacon Street, Suite 300 Boston, MA 02108

Re:

Boston Musicians' Association, AFM, Local 9-535 and the Wang Theatre. Inc. - Staffing Waivers

Dear Gabe:

As we discussed during our telephone conversation this past Monday, November 29, 2004, no negative inference shall be drawn from the fact that your November 15, 2004 letter to me concerning staffing waivers for musicians at the Wang Theatre, Inc. ("WTI" or the "Theatre") references only the collective bargaining agreement between the Opera House and the Boston Musicians' Association, AFM, Local 9-535 ("Local 9-535") and does not expressly reference the Colonial Theater's agreement with Local 9-535.

During the negotiations that resulted in the new collective bargaining agreement between Local 9-535 and WTI (the "Agreement"), the Theatre expressed its current view that the Opera House is the more likely source of competition for WTI. For this reason, your November 15 letter expressly references only the Opera House in order to ensure that WTI is able to compete with the Opera House as effectively as possible for the booking of any particular attraction with respect to musician staffing issues.

No negative inference shall be drawn from the fact that your November 15 letter does not expressly reference the Colonial Theater. Rather, if WTI finds itself in competition with the Colonial Theater for the booking of any attraction, the Theatre may seek Local 9-535's agreement to a staffing waiver in the same manner as provided in your November 15 letter. In such event, Local 9-535 will consider such a waiver request on the same basis and with the same intention







expressed by Local 9-535 not to disadvantage WTI as it would view a waiver request by WTI concerning competition with the Opera House.

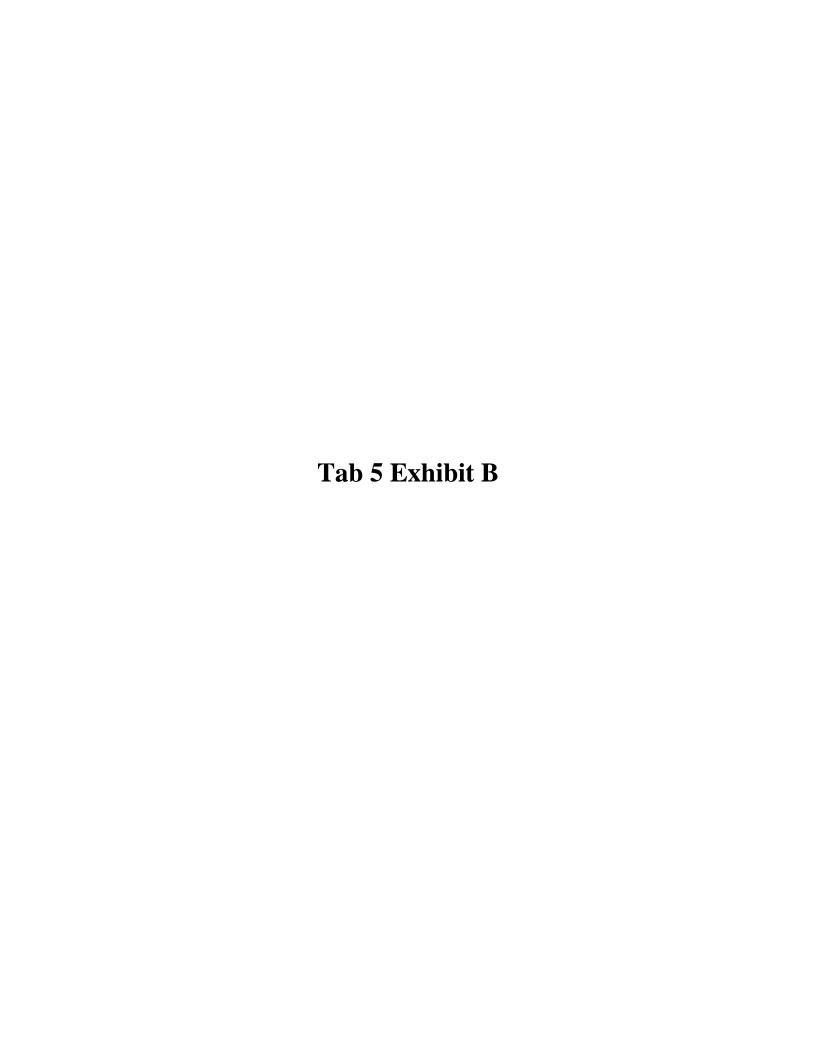
Sincerely,

SEYFARTH SHAW LLP

Bichard L. Alfred

rh

cc: William C. Taylor, Senior Vice President and Chief Operating Officer



MEMO OF AGREEMENT

The parties below agree to extend the current collective bargaining agreement between ward find the Performing Arts Center (d/b/a Wang Theatre) and the Boston Musicians' Association, AFM Local 9-535, through December 31, 2007.

Any wage rates agreed to in the successor agreement will be retroactive to September 2, 2007.

WANG THEATHE THE	
Citi Performing Arts Center	Boston Musicians' Association
Authorized Signature	Authorized Signature
SUSTAIN A. SPANISONE JA. Print Name	BARBARA OWERS Print Name
PRESENT + LOD	ARBIOGOT
Title	Title
10/31/07	9130107
Date	Date



AGREEMENT BETWEEN

TREMONT THEATER, INC.

AND

BOSTON MUSICIANS' ASSOCIATION, AMERICAN FEDERATION OF MUSICIANS LOCAL 9-535

September 1, 1997 through August 31, 2000

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This Agreement is made as of this _______day of _________1998 by and between TREMONT THEATER, INC., 270 Tremont Street, Boston, Massachusetts, a Massachusetts corporation formed pursuant to Chapter 180 of the Massachusetts General Laws, hereinafter referred to as the EMPLOYER, and BOSTON MUSICIANS' ASSOCIATION, LOCAL 9-535, AMERICAN FEDERATION OF MUSICIANS, 130 Concord Ave., Belmont, Massachusetts, an unincorporated association, hereinafter referred to as the UNION.

PREAMBLE

It is the intent of the parties hereto that this Agreement secure uninterrupted operation of performances at the theater facility located at 265 Tremont St., Boston, Massachusetts, hereinafter referred to as the SHUBERT THEATER, free from labor disputes and provide a stabilization in the relationship of the Employer and the Union. To this end, the rates of pay, wages, hours of employment and other conditions of employment of those members of the Union employed by the Employer are established by this Agreement.

The Union, for itself and its members, agrees that it will perform its services in good faith and will abide in all respects by the terms and conditions of this Agreement and the rules and regulations of the Employer not in conflict with this Agreement. The Employer agrees to abide in all respects by the terms and conditions of this Agreement.

The Employer and the Union agree to cooperate to encourage the use of live music in cultural programming covered by this Agreement.

Whenever the pronoun "he" or its derivatives is used in this Agreement, it shall refer to both males and females.

ARTICLE I

RECOGNITION

Section 1. Bargaining Representative.

The Employer recognizes the Union as the exclusive bargaining representative for those of its members employed by the Employer at the Shubert Theater, hereinafter referred to as the EMPLOYEES or, where applicable, the PLAYERS. The Union agrees that during the term of this Agreement, those of its members accepting employment in a performance at the Shubert Theater shall be employed by the Employer subject to the terms and conditions of this Agreement.

Section 2. Union Shop.

All Employees currently members of the Union shall be required, as a condition of continued employment, to remain members of the Union during the term of this Agreement. All persons hereafter engaged as Employees shall be required, as a condition of continued employment, to become members of the Union before the 30th working day following the beginning of their employment accumulated at any time during the course of a twelve-month period and to remain members so long as employed by the Employer. An Employee who fails to become or to remain a member of the Union as herein provided shall be dismissed by the Employer upon demand of the Union. Nothing contained herein shall, however, require the Employer to discharge or in any way to discriminate against any Employee who has been denied membership or has had membership in the Union terminated for any reason other than the failure of such Employee to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the Union.

Section 3. Union Dues Check-Off.

The Union shall be permitted authorization for payroll dues deductions as set forth in Appendix B.

Section 4. Contractor(s).

The Employer shall at all times have complete control of the services rendered by its employees. The Employer shall designate at least annually and more often where appropriate, after consultation with the Union about prior performance and other relevant matters, at least one, but not more than two, Employees who shall act as contractor(s) on behalf of the Employer at such times as the Employer requires the services of Employees under the terms and conditions of this Agreement. Such contractor(s) shall:

- A. Select and engage Employees;
- B. Submit payroll information to the Employer;
- C. Distribute wages to the Employees;
- D. Replace any Player who, because of illness, absence, or any other reason, does not perform any or all of the services required by this Agreement in the manner prescribed herein, subject to the grievance procedure set forth in this Agreement;
- E. Be present at all performances and rehearsals for which he is designated as contractor, reasonable absences approved by the Employer excepted. The choice of a substitute contractor during such reasonable absences shall be subject to the consultation provision set forth hereinabove. The substitute contractor shall assume all the functions and responsibilities of the contractor. The Employer shall give the Employees reasonable advance notice of the engagement of a substitute contractor.
 - F. Perform all other duties customarily performed by contractors.

<u>ARTICLE II</u>

SCOPE OF THE AGREEMENT

Section 1. Application.

A. This Agreement constitutes the only existing Agreement between the Employer and the Union, and all previous Agreements are hereby superseded.

- B. The terms of this Agreement shall apply to the following categories of performances at the Shubert Theater, and not to any other categories of performances or events thereat:
 - 1. Musical and Operetta: Presentations with live music containing more than twenty-five (25) minutes of music shall be classified either as a musical or operetta. In the event of a dispute as to the classification of such a presentation, either party may invoke the grievance and arbitration procedures of Article XVI;
 - 2. Touring Ballet or Opera: Any touring ballet or opera company;
 - 3. Resident opera defined as any opera, grand or chamber, presented by or in association with the Employer and originating within the Boston Metropolitan area;
 - 4. Miscellaneous other presentations defined as individual artists and/or groups which fall outside the above categories and which do not travel under an Actor's Equity

 Association contract. Private functions are not to be included in this category; and
 - 5. Private Functions.
- C. Notwithstanding the foregoing, the following categories of performances at the Shubert Theater shall be excluded from the scope of this Agreement:
 - 1. Presentations by organizations with whom the Union has existing collective bargaining agreements, provided the nature of such presentations are covered by those agreements. However, any presentation of musical theater or operetta shall not be excluded from the scope of this agreement. Non-professional college or amateur productions shall be excluded from the scope of this agreement.
 - Touring opera companies, opera productions or ballet companies touring with their own orchestras, such as the Metropolitan Opera's annual tour;
 - Any presentation requiring twenty-five minutes or less of live music;
 - 4. Performances limited to the use of music created spontaneously by electronic means, not scored and committed to tape, such as music by chance;

- 5. Performances which require instruments not played competently by any member of the Union;
- 6. Performances in which instruments are played by members of the speaking cast as an integral part of the presentation; and
 - 7. Private parties and commencements (not including stage shows).

Section 2. Parties.

- A. This Agreement is binding upon the Employer and its successors, the Union and its successors and those Union members accepting employment with the Employer as described hereinabove.
- B. The Employer agrees that in the event that it licenses or leases the Shubert Theater for theatrical or musical purposes within the scope of this Agreement, this Agreement will be binding upon the licensee or lessee.

ARTICLE III

MANAGEMENT RIGHTS

Except as otherwise expressly relinquished or modified by provisions of this

Agreement, the Employer retains all rights which it would have in the absence of such

Agreement. Without limiting the generality of the foregoing, and by way of example and not

of limitation, such rights include the exclusive right to set its policy, to manage its business, to

direct the working forces, to establish work rules and regulations not inconsistent with this

Agreement, to determine the qualifications for and to select its Employees, to assign Employees

to jobs, to increase and decrease the working forces, to determine the work content of jobs, to

determine the hourly, daily and weekly schedules of work, to determine the methods,

processes and means of accomplishing work; and to discipline or discharge Employees.

ARTICLE IV COMPLEMENT OF EMPLOYEES

Section 1. Musicals and Operettas.

- A. For presentations classified as musical or operetta, the Employer shall employ not less than the highest of the following numbers of Employees:
 - 1. Twelve (12), OR
 - 2. A number equal to the number of musicians for which the musical or operetta was scored for its last Broadway appearance or its last national tour (if and only if such appearance or tour took place within six (6) years of the Boston appearance), OR
 - 3. A number equal to two-thirds (2/3) of the entire orchestra actually engaged for the musical or operetta (with the conductor not credited against such number).
- B. In complying with the above minimums, the Employer shall in no case be required to employ more than the higher of the following numbers of Employees:
 - 1. Sixteen (16) (with the conductor not credited against such number), OR
 - 2. A number equivalent to two-thirds (2/3) of the entire orchestra actually engaged for the musical or operatta (with the conductor not credited against such number).
- C. No minimums shall apply to self-contained concerts and productions such as "SARAFINA" or "BUDDY", where musicians are an integral part of the show.

Section 2. Touring Ballet.

For presentations classified as touring ballet, the Employer shall employ not less than the

higher of the following numbers of Employees:

- 1. A number equal to two-thirds (2/3) of the entire orchestra actually engaged for the ballet (with the conductor not credited against such number), OR
- 2. A number equal to one-hundred percent (100%) of the entire orchestra actually engaged for the ballet minus "regular travelers."

For purposes of this section, "regular travelers" shall be defined as musicians who are part of any orchestra touring with the ballet.

Section 3. Resident Opera.

For presentations classified as resident opera, the Employer shall employ not less than the following numbers of Employees:

(a) Grand Resident Opera:

40 Employees

(b) Chamber Resident Opera:

23 Employees

Section 4. Miscellaneous Other Presentations.

For presentations classified as miscellaneous other presentations, the Employer shall employ not less than twelve (12) Employees.

Section 5. Private Functions.

For presentations classified as private functions, the Employer shall be required to engage Employees as required by the nature of the presentation.

Section 6. Employment of Local Employees.

A. Theatrical Musicals Touring Under Pamphlet B

Notwithstanding the foregoing, the Employer may designate an aggregate of nine (9) weeks during the term of this Agreement as Theatrical Musical Pamphlet B Weeks ("Theatrical Musical Pamphlet B Weeks"). During the Theatrical Musical Pamphlet B Weeks, the Employer may present musicals and/or operettas traveling under Pamphlet B of the American Federation of Musicians ("Pamphlet B Musical/Operetta"). When presenting a Pamphlet B Musical/Operetta, the Employer shall compensate that number of local musicians equal to the number of non-local musicians playing in the orchestra of such musical or operetta at 50% of the basic wage scale (Monday-Saturday) unless the Employer elects to employ such local musicians at 100% of the basic wage scale. In this latter event, each local musician so employed shall be

deemed the equivalent of two local musicians for the purpose of determining compliance with this paragraph. A musician engaged under this paragraph at 50% of the basic wage scale shall not be required to attend all performances. During the term of this Agreement, a request for additional Theatrical Musical Pamphlet B Weeks may be submitted by the Employer to the President and the Theater Committee of the Union for consideration.

For any Pamphlet B Musical/Operetta playing other than during a Theatrical Musical Pamphlet B Week, the Employer shall engage one Employee, who shall be compensated at 100% of the basic wage scale (Monday-Saturday), for each non-local musician playing in the orchestra of such musical or operetta. The provisions of Article IV, Section 7 shall not apply to Pamphlet B Musicals/Operettas playing at the Shubert Theater pursuant to this paragraph.

B. Miscellaneous Other Presentations Touring Under Pamphlet B.

Notwithstanding the foregoing, the Employer shall not be bound by the minimum requirements provisions of this Article for the following miscellaneous other presentations traveling under Pamphlet B of the American Federation of Musicians:

- 1. All such presentations of not more than four (4) performances;
- Four (4) such presentations per contract year of more than four
 performances but not more than one (1) calendar week; and
- 3. One (1) such presentation per contract year of more than one (1) calendar week but not more than three (3) calendar weeks.

Section 7. Waiver.

The Employer shall be entitled to request a waiver or modification of any minimum number of Employees that may be required by this Article as follows:

A. All waiver requests shall require a minimum of two (2) weeks notice.

- B. A request for relief from the minimums set forth in this article which seeks a minimum of not less than twelve (12) Employees shall be submitted to the Theater Committee of the Union which shall consider such a request on the basis of classification of the presentation, scoring and other circumstances relating to the particular presentation. Any such request shall not be unreasonably denied.
- C. A request for relief from the minimums set forth in this article which seeks a minimum of less than twelve (12) Employees shall be submitted for the Board of Directors of the Union which shall consider such a request on the basis of classification of the presentation, scoring and other circumstances relating to the particular presentation. Any such request shall not be unreasonably denied.

ARTICLE V

WAGES

Section 1. Basic Minimum Wage.

The basic minimum wage paid by the Employer to the Employees for performances and rehearsals within the scope of this Agreement shall be as indicated in Appendix A, attached hereto and made a part hereof. Nothing contained in Appendix A shall change the agreement of the parties with respect to the Basic Work Week as provided in Article VI.

Section 2. Individual Performance Rates.

If a presentation plays less than eight (8) performances during any work week, Employees shall be paid the single performance rate. In no event, however, shall the amounts paid under the single performance rate for less than eight (8) performances during any workweek, exclusive of overtime, exceed the weekly wage specified in Appendix A.

Section 3. Conductor's Pay.

A conductor shall receive one hundred fifty (150%) percent of the basic minimum wage for conducting in addition to any other wages due him for playing or contracting.

Section 4. Contractor(s)' Premium(s).

A. Musicals and Operettas.

- 1. A contractor shall receive seventy-five percent (75%) of the basic minimum wage for contracting.
- 2. A contractor shall receive one hundred and fifty percent (150%) of the basic minimum wage for contracting and playing.
- 3. A contractor shall receive two hundred percent (200%) of the basic minimum wage for contracting, playing and conducting.
- 4. Under no circumstances shall any contractor or conductor receive more than two hundred (200%) percent of the basic minimum wage for Musicals and Operettas.

B. Touring Ballet and Resident Opera.

- 1. A contractor shall receive one hundred percent (100%) of the basic minimum wage for contracting.
- 2. A contractor shall receive two hundred percent (200%) of the basic minimum wage for contracting and playing, or contracting, playing and conducting.
- 3. Under no circumstances shall any contractor or conductor receive more than two hundred percent (200%) of the basic minimum wage for Touring Ballet and Resident Opera.

C. Miscellaneous Other Presentations and Private Functions.

- A contractor shall receive twelve and one-half percent
 (12 1/2%) of the total wages paid to Employees engaged for a
 Miscellaneous Other Presentation [or Private Function]
 (including wages paid to Employees for rehearsals); but in no
 event shall a contractor receive more than \$1,400 per
 performance week for contracting.
- 2. In addition to the above payment for contracting, a contractor shall receive one hundred percent (100%) of the basic minimum wage for playing and/or conducting.

Section 5. Doubling.

A. Doubling shall be paid at the following rates:

1. First double at twenty percent (20%) additional to the basic minimum wage

2. Second and third doubles each at fifteen (15%) percent additional to the basic minimum wage rate; and

3. Doubles thereafter each at ten (10%) percent additional to the basic minimum wage rate.

B. The following are not to be considered doubles:

Piano and Celeste;

2. A and B flat (Soprano) Clarinets;

3. Drummer's regulation trap and miscellaneous small percussion instruments.

C. If an Employee has been contracted to double before the first rehearsal or first performance of a presentation, and the double or doubles are canceled before the first rehearsal or first performance, the Employee shall be reimbursed for any expenses incurred in the rental or transportation of instrument(s) required for the canceled double. When doubling begins with a rehearsal and is subsequently canceled during the rehearsal period, the Employee shall receive the appropriate doubling percentages for any services performed on the canceled double or doubles, plus any costs of rental and transportation.

D. After a presentation has begun, one week's notice shall be required for cancellation of a double or doubles. In the event that a double is canceled without at least one (1) week's notice after a presentation has begun, the Employee will receive the previously arranged doubling premium for one (1) week and will be reimbursed for any expenses in the rental or transportation of instrument(s) required for the canceled double.

Section 6. Principal or First Desk Players.

In the event that a ballet or opera presentation and/or the Employer shall require the engagement of principal or first desk players, Employees so engaged shall receive not less than ten (10%) percent additional to the applicable basic minimum wage.

Section 7. Playing on Stage or in Costume.

A. Playing On Stage.

Any Employee required to play on stage and in view of the audience or outside of the designated pit and in view of the audience shall receive ten percent (10%) additional to the applicable minimum wage. The premium for playing on stage shall not apply to concert presentations.

B. Playing In Costume.

Any Employee required to play in costume on stage and in view of the audience or outside of the designated pit and in view of the audience shall receive twenty percent (20%) additional to the applicable minimum wage. For purposes of this Section, costume shall be defined as anything other than appropriate professional attire.

Section 8. Harpist, Concert Master, First Trumpet, Midi-Synthesizer.

- A. Harpists who provide their own instrument shall be paid an additional \$50 per work week for the use of such instrument.
- B. If an Employee is engaged as concert master or first trumpet, he shall be paid an additional 10% of the applicable wage rate.
- C. If an Employee is engaged to play midi-synthesizer, he shall be paid an additional twenty-five percent (25%) of the applicable wage rate.

Section 9. New Year's Eve. Any employee required to perform on New Year's Eve shall be paid time and one-half (150%) of the applicable wage rate including doubling, midi-synthesizer pay, etc.

ARTICLE VI

BASIC WORK WEEK

Section 1. Definition.

The Employer shall have the right to establish the basic work week for presentations during the term of this Agreement. The basic work week shall consist of not more than eight (8) performances of the same presentation taking place on any six (6) consecutive days of any week. Rehearsals for presentations shall not be considered part of the basic work week.

Section 2. Overtime.

A. Performances in excess of eight (8) during the basic work week shall be paid at the applicable overtime rate.

B. If there is no day off during a work week, Employees shall be paid at the overtime rate for any performance on the seventh consecutive day of work during that work week. When the Employer, in its discretion, changes the basic work week and such change results in seven (7) or more consecutive performance days, overtime pay shall not be due for the first six (6) performance days of the new work week. However, the Employer may exercise its discretion only once during the run of any presentation to change the work week without paying overtime for the first six (6) performance days of the new work week.

Section 3. Christmas Week.

During Christmas week, the Employer may change the day off during the work week of the presentation then engaged. Such a change shall not constitute a change in work week under Section 2(B) of this Article.

Section 4. Pyramiding.

There shall be no pyramiding of overtime.

ARTICLE VII

MINIMUM CALLS AND PERFORMANCE DURATION

Section 1. Performances.

Performance calls shall begin fifteen (15) minutes prior to the advertised curtain time and shall be no longer than three (3) hours and fifteen (15) minutes in duration. Performances continuing beyond three (3) hours and fifteen (15) minutes shall be subject to the payment of overtime in increments of fifteen (15) minutes. A performance shall be considered to have concluded when the music for the performance has ended.

Section 2. Break-In Company Performances.

A. A break-in company shall be defined as a company, other than a ballet or opera company, which has played in not more than three (3) cities for not more than one month prior to its Boston engagement. The Employer shall have the right to request a waiver for shows which exceed the one month maximum previous run but are presented at the Shubert Theater with a majority of new cast members and/or significantly new sets. Such requests shall not be unreasonably denied.

B. Any provisions of this Agreement to the contrary notwithstanding, the opening night or opening preview performance of any break-in company shall be not more than four (4) hours in duration, provided that the performance is concluded prior to midnight. Following the opening night or opening preview, performances during the first full playing week of the break-in company shall not exceed three and one-half (3 1/2) hours, provided that the performance is concluded prior to midnight. Following the first full playing week of the break-in company, the provisions of this Agreement concerning regular performances shall apply. Performances extending beyond four (4) hours or three and one-half (3 1/2) hours respectively, or beyond midnight shall be subject to the overtime provisions of this Agreement.

Section 3. Performances Without Intermissions.

There shall be at least one (1) fifteen (15) minute intermission during a performance.

Any omission of the required intermission during a performance or dress rehearsal shall entitle each Employee engaged for that performance or dress rehearsal to an additional five percent (5%) of the applicable wage rate per omitted intermission. If a performance without intermission occurs, the length of a show for the purpose of overtime payment shall be calculated as if a fifteen (15) minute, intermission had taken place. If there is no intermission but the employees can leave the pit (e.g., A Chorus Line and Man of LaMancha), no additional compensation shall be paid.

ARTICLE VIII

REHEARSALS

Section 1. Regular Rehearsals.

A. Definition.

For all presentations other than ballet and opera, the regular rehearsal day shall end at 6:00 p.m. The regular rehearsal day for ballet and opera shall end at 7:00 p.m.

B. First Rehearsal Calls for All Presentations.

First rehearsal on any day shall be called for a minimum of three (3) hours with overtime applicable thereafter at the rate of time and one-half the applicable rehearsal rate measured in fifteen (15) minute increments.

C. Second Rehearsal Calls for all Presentations.

A second rehearsal may be called for a minimum of two (2) hours following a one (1) hour unpaid rest period with overtime applicable after three (3) hours at the rate of time and one-half the applicable rehearsal rate measured in fifteen (15) minute increments. When more than a one (1) hour unpaid rest period occurs between the first and second rehearsals, the second rehearsal shall be a minimum of three (3) hours.

Section 2. Rehearsals Beyond the Regular Rehearsal Day.

A. Rehearsals Extending Beyond the Rehearsal Day.

In the event that it becomes necessary to extend rehearsals beyond the regular rehearsal day, overtime shall be paid at twice the applicable hourly rehearsal rate measured in fifteen (15) minute increments. In the event that any such extension continues for more than one (1) hour beyond the regular rehearsal day, the last call prior to the end of the regular rehearsal day shall be paid at the applicable performance rate.

B. Rehearsals Commencing After the Regular Rehearsal Day.

Rehearsals commencing after the regular rehearsal day may be called for three (3) hours or less and shall be paid at the applicable performance rate. In the event that it becomes necessary to continue a rehearsal beyond three (3) hours, Employees shall be paid for such continuation at the applicable performance overtime rate.

Section 3. Rehearsals Prior to Performances and Dress/Open Rehearsals.

A.1. One (1) Hour Call.

For all presentations covered by this Agreement, the Employer may call a one (1) hour rehearsal prior to a performance which shall begin no earlier than two (2) hours prior to the advertised curtain time and end no later than one-half (1/2) hour before advertised curtain time. Such rehearsal calls shall be paid at the applicable one (1) hour pro-rata performance rate. When such a rehearsal is called, there shall be an unpaid rest period extending from the end of the one (1) hour call to the performance call. This rest period shall be strictly observed, and no talkover shall be held between the end of the one (1) hour rehearsal and advertised curtain time. During the one (1) hour call there shall be one (1) five (5) minute break to be scheduled at the Employer's discretion.

A.2. Two (2) Hour Call

For all presentations covered by this Agreement, the Employer may call a two (2) hour rehearsal prior to a performance which shall begin no earlier than three (3) hours prior to the advertised curtain time and end no later than one-half (1/2) hour before advertised curtain time. Such rehearsal calls shall be paid at the applicable two (2) hour pro-rata performance rate. When such a rehearsal is called, there shall be an unpaid rest period extending from the end of the two (2) hour call to the performance call. This rest period shall be strictly observed, and no talkover shall be held between the end of the two (2) hour rehearsal and advertised curtain time. During the two (2) hour call there shall be two (5) minute breaks to be scheduled at the Employer's discretion.

B. Rest Periods Prior to Rehearsal and Performances and Dress/Open Rehearsals.

With the exception of the unpaid rest period following a one (1) hour or two (2) hour call as described in Section 3(A) of this Article, there shall be an unpaid rest period of not less than one (1) hour prior to advertised curtain time.

C. Payment for Non-Observance of Required Rest Periods.

With the exception of talk-over rehearsals, any non-observance of the required rest period shall be paid at the same rate as the last fifteen (15) minute period prior to the scheduled commencement of the rest period, plus an additional five percent (5%) of the applicable wage rate for each fifteen (15) minute increment.

D. Talk-Over Rehearsals.

Except for ballet and opera, the Employer may call a talkover rehearsal one-half (1/2) hour prior to the advertised curtain time and/or after a performance until midnight. Such talkover rehearsals prior to performances shall be paid in one-half (1/2) hour increments at the applicable one (1) hour rehearsal rate. Talk-over rehearsals following the performance shall be paid at the applicable performance overtime rate.

Section 4. Rehearsals After 12:00 Midnight.

Rehearsals other than dress rehearsals extending beyond midnight or called between midnight and 9:00 a.m. shall be paid at the applicable overtime rate.

Section 5. Dress and/or Open Rehearsals.

Dress and/or open rehearsals shall be compensated at the performance rate and shall be considered performances for purposes of the weekly performance configuration. For the purposes of this paragraph, a dress rehearsal is a rehearsal with Employees at the site of the performance during which the stage performers wear costumes and performance lighting is used. An open rehearsal is defined as any rehearsal at which individuals in addition to the press, Employees of the presentation, and the Employer are entitled to be present.

Section 6. Paid Breaks.

There shall be a paid break of five (5) minutes during each hour of rehearsal for musicals, operettas, miscellaneous other presentations and private functions. There shall be a paid break of ten (10) minutes during each hour of rehearsal for ballet and opera. All breaks shall be taken as the score shall permit and may be staggered by section. Consistent with the terms of this paragraph, paid breaks shall be scheduled by the contractor(s) or conductor/leader.

Section 7. Rehearsal Pianist(s).

Rehearsal pianist(s) may be engaged in accordance with the terms and conditions set forth hereinabove for Employees and shall be paid at the rate of two (\$2) dollars per hour additional to the applicable hourly rehearsal rates of pay and shall not require the services of a contractor or conductor/leader.

Section 8. Calling of Rehearsals and/or Performances.

After performances or rehearsals of a given presentation have started, reasonable notice must be given for any additional rehearsal(s) or performance(s) in order that the Employees may arrange their professional schedules. If reasonable notice has not been given, the Employee has the right to engage a substitute, subject to the approval of the contractor, whose approval shall not be unreasonably withheld.

ARTICLE IX

RECORDED MUSIC

In the event that the Employer utilizes recorded music for any performance within the scope of this Agreement, the Employer shall, for each such performance, and at its sole discretion, either (a) engage three Employees (at the applicable performance rate) and the contractor (at two times the applicable performance rate) to perform; or (b) pay three Employees designated by the contractor (at the applicable performance rate minus 16 1/2%) and the contractor (at two times the applicable performance rate minus 16 1/2%) even though they are not engaged to perform.

Notwithstanding the above, the Union shall waive the foregoing paragraph for the term of this Agreement, and the foregoing paragraph shall not become effective unless the Employer and the Union agree in negotiations for a successor agreement to the Agreement that the foregoing paragraph shall become effective.

ARTICLE X

RESPONSIBILITIES OF EMPLOYEES

Employees shall have the following professional responsibilities to the Employer in addition to any other such responsibilities included in this Agreement, within Management's right to require, or customary in the profession:

- A. To be fully prepared to rehearse and to perform at appointed times;
- B. To report any injury or illness immediately to the contractor or Employer.
- C. To cooperate with the Employer in providing information for publicity. However, the Union agrees that all publicity relating in any way to presentations of the Employer shall at all times be under the Employer's exclusive control, and the Employees shall not communicate with the media except at the prior direction of the Employer.

ARTICLE XI

SERVICES OF EMPLOYEES

Section 1. Limitation on Employees' Services.

The Employer shall not require Employees to perform services not within the scope of this Agreement.

Section 2. Substitutions of Players.

In the Employer's sole discretion, which discretion shall not be unreasonably exercised, substitutions of Players may from time to time be allowed in order to accommodate a Player's professional schedule. The contractor shall be responsible for selecting and approving and breaking-in such substitutes authorized by the Employer.

Section 3. Public Transportation Failure.

In the event that an Employee is unable to return home after a performance because of a failure of public transportation resulting from a storm, the Employer shall pay up to a total of \$75 toward that Employee's in-town lodging at The Tremont House, 275 Tremont Street, Boston, Massachusetts, and breakfast.

ARTICLE XII

FILMING, RECORDING AND BROADCASTING

Section 1. For Commercial Purposes.

For commercial purposes, any filming, recording or broadcasting by any means now in use or hereafter developed of rehearsals or presentations within the scope of this Agreement, shall be subject to current American Federation of Musicians' negotiated rates for such services in the applicable industry-wide agreements provided that such filming, recording or broadcasting does not displace Employees. Notwithstanding the foregoing, in the event of a displacement of Employees, the Union shall consider the request of the Employer for a waiver of the foregoing provision, and the granting of such waiver shall not be unreasonably withheld. Where such a waiver is granted, the current American Federation of Musicians' negotiated rates for such services in the applicable industry-wide agreements shall be paid.

Section 2. For Non-Commercial Purposes.

The Employer may permit the filming, recording or broadcasting of rehearsals or presentations within the scope of this Agreement for non-commercial purposes without additional compensation as follows:

A. By the news media or the Employer to publicize presentations of the Employer. This provision shall include public service announcements but shall not include paid advertising placed by the Employer or others.

In the case of radio and/or television, the excerpt shall not exceed three (3) minutes out of any performance or rehearsal. In the case of any other electronic devices, such as videocassettes the excerpt shall not exceed thirty (30) seconds out of any performance or rehearsal. If these limits are exceeded, payment will be made to the Employees engaged in the excerpt at the prevailing rates of the American Federation of Musicians.

B. By the Employer to make study films or to broadcast for study purposes or for latecomers within the Employer's premises by closed circuit television. Except for late comers, all recordings and broadcasting for such purposes shall be altered to make the recording unfit for use on commercial programming.

ARTICLE XIII

INSTRUMENT CARTAGE

The Employer shall pay Employees thirty dollars (\$30) for each round-trip per instrument for cartage of tympani (one pair), drumset, xylophone, vibraphone, marimba, chimes with stand and harp and shall reimburse Employees for cartage expenses for other large equipment not reasonably capable of personal transport.

ARTICLE XIV

INSTRUMENT INSURANCE

The Employer shall provide insurance coverage on employees' musical instruments for an amount not to exceed \$30,000 per occurrence of loss or damage caused by fire or theft regardless of the number of instruments involved, less a \$100 deductible. Such insurance shall only be provided for musical instruments on the Shubert Theater premises during performances and between performances on the same day (and for twenty-four hours a day for non-portable instruments during presentations). A copy of the insurance policy endorsement providing this coverage is attached hereto as Appendix C and incorporated by reference herein.

<u>ARTICLE XV</u>

CANCELLATIONS

Section 1. Force Majeure.

In the event that the Employer is unable to fulfill any of its obligations under this Agreement because of fire, flood, accident, failure of transportation, power failure, labor dispute, strike, lockout, riot, act of God, war, the public enemy, or for any other similar cause which could not reasonably have been anticipated or prevented by the Employer, the Employer shall notify any officer of the Union as soon as possible, in which event the Employees shall not be entitled to any compensation for the time during which said services shall not, for such reasons, be rendered. Such notice shall, whenever feasible, be in writing. Should any of the foregoing conditions continue for a period of ten (10) days or more after such notice to the Union, either party may, in writing, terminate the Employees' employment with the Employer, and the Employer will pay for all services rendered to date.

Section 2. Other.

Employees engaged for rehearsals or performances of presentations by the Employer shall be given not less than seven (7) days' notice of any cancellation not considered a cancellation due to Force Majeure. Where the Employer has provided such Employees with at least seven (7) days' notice of cancellation, the Employer shall not be liable for payment of any nature. Where the Employer has not provided such Employees with at least seven (7) days' notice of cancellation, the Employer shall be liable for payment of all rehearsals and performances scheduled within seven (7) days of the date a cancellation notice is given.

ARTICLE XVI

STRIKES AND LOCKOUTS

During the term of this Agreement, neither the Union nor its agents, nor its members, nor any Employee covered by this Agreement, will authorize, instigate, aid, condone or engage in a stoppage, sympathy strike, slowdown, any other type of strike or other interference with work, or respect any picket line, and the Employer will not institute any lockout of Employees.

ARTICLE XVII

GRIEVANCE AND ARBITRATION

Section 1. Grievances.

- A. A grievance, for purposes of this Article, shall be defined as a dispute between the Employer and the Union concerning the meaning or application of this Agreement.
- B. Any Employee directly involved in a grievance shall seek to resolve such a grievance informally through discussions with the Vice-President/Chief Operating Officer. The Employer shall seek to resolve a grievance informally through discussions with the Union or any officer or business agent thereof capable of resolving such a grievance on the Union's behalf.
- C. In the event that a grievance is not resolved informally as provided hereinabove, the Employer or the Union may process such a grievance as follows:

1. Step One.

The grievance shall be submitted in writing by the Union to the Vice-President/Chief Operating Officer or by the Employer to the Union President as soon as possible, but in no event later than ten (10) calendar days of the date the facts giving rise to the grievance occurred or could reasonably have been discovered. Such a written grievance shall be dated and signed and shall state the provisions of the Agreement involved in the grievance, an explanation of the grievance and the remedy sought. The Vice-

President/Chief Operating Officer or the Union President shall respond to the grievance within five (5) calendar days. If the grievance is not resolved to the satisfaction of the Employer or the Union within five (5) calendar days of its submission under Step One, either party may, within five (5) calendar days thereafter, submit the grievance to Step Two.

2. Step Two.

A grievance submitted for review under Step Two shall be submitted in writing to the Vice-President/Chief Operating Officer or to the Union President. Within five (5) calendar days of the timely submission of such a grievance, the Employer and the Union, through their respective representatives, shall meet to discuss the grievance. The Vice-President/Chief Operating Officer or the Union President shall, no later than five (5) calendar days following this meeting, respond to the grievance in writing.

3. The parties may, by mutual agreement in writing, modify the time limits set forth herein.

Section 2. Arbitration.

Within ten (10) calendar days from the date on which the Step Two response is received or due, whichever is earlier, the Union or the Employer may submit an unresolved grievance to the Boston office of the American Arbitration Association for resolution, in which event the American Arbitration Association's Voluntary Labor Arbitration rules shall apply. The administrative fees of the American Arbitration Association and the fees of the arbitrator shall be borne equally by the parties. The decision of the arbitrator shall be final and binding upon the parties. However, in no event shall the arbitrator have the authority to add to, modify or subtract from the terms and conditions specifically set forth in this Agreement.

The time limits prescribed by this Article for processing grievances shall be strictly enforced. In the event the Union or Employer, as petitioner, fails to process a grievance to the next step within any of these time limits, the grievance shall be deemed to have been waived.

ARTICLE XVIII

DISCRIMINATION

In accordance with applicable law, the parties shall not discriminate against any Employee in its employment practices on the basis of Union activity, race, color, religion, sex, sexual orientation or national origin.

ARTICLE XIX

ACCESS TO SHUBERT THEATER

The President, Vice-President and Secretary-Treasurer of the Union shall have access to the Shubert Theater at reasonable times and during visits of reasonable duration for the purpose of conferring with Employees or the Employer about matters within the scope of this Agreement. In no event, however, shall such visits interfere with or distract Employees from the performance of their functions and responsibilities.

ARTICLE XX

WORKERS' COMPENSATION

The Employer shall provide workers' compensation insurance for all Employees as required by law.

ARTICLE XXI

PENSION

During the term of this Agreement, the Employer shall contribute to the American

Federation of Musicians – Employers' Pension Fund on behalf of each musician it employs, the

following percentages of his gross non-media earned wages

Effective September 1, 1997	9%
Effective September 1, 1998	10%
Effective September 1, 1999	10%

Such gross non-media earned wages shall exclude, without limitation, cartage, harp maintenance, wages paid above minimums established in this agreement and amounts paid to employees who do not perform pursuant to Article IX (Recorded Music) and Article IV, Section 6 (Employment of Local Employees). Notwithstanding the above, gross non-media earned wages for purposes of this article shall include amounts paid to Employees who do perform pursuant to Article IX(a).

ARTICLE XXII

PAID LEAVE

A. SICK DAYS. Employees who are engaged for a production of more than four (4) weeks shall be entitled to take one (1) sick day during each four (4) week period of that production. Such sick days may be used solely as a result of the Employee's own illness. Sick days shall be paid at the rate of 60% of the applicable wage rate. Any abuse or misuse of sick leave shall be cause for immediate discharge.

B. FUNERAL LEAVE. All Employees shall be entitled to one day of Funeral Leave, in the event of death of an immediate family member or spouse equivalent only, to be paid at the rate of 60% of the applicable wages. Any abuse or misuse of funeral leave shall be cause for immediate discharge.

ARTICLE XXIII

FACILITIES FOR EMPLOYEES

Section 1. Washrooms.

The Employer shall continue to provide and maintain separate, adequate, sanitary male and female washrooms for the Employees.

Section 2. Musicians' Area.

The Employer shall provide and maintain a Musicians' Area in the Trap Room, with adequate coat racks, chairs and lockable locker space for the Employees' instruments, instrument cases and clothing, and changing facilities, separated for men and women.

Adequate tables for the assembling of instruments shall be provided within the Musicians' Area in the Trap Room. There shall be a means of securing the area within which the Employees' lockers and tables are maintained, using the means reasonably determined by the Employer to be most feasible for this purpose. Nothing in this Agreement, however, may be construed to imply that the Employer concedes responsibility for the safekeeping of any of the Employees' equipment or clothing.

Section 3. Access to Orchestra Pit.

The Employer shall provide two means of safe and secure access to and egress from the orchestra pit.

Section 4. Performance and Rehearsal Conditions.

A. The Employer shall continue to provide and maintain chairs in the orchestra pit which are without arms, straightbacked, and padded in both back and seat. If a rehearsal is held outside the pit, chairs of equivalent comfort to that available in the pit shall, wherever possible, be provided.

B. The Employer shall endeavor at all times to maintain adequate lighting, ventilation and a temperature between sixty-five (65) and eighty (80) degrees Fahrenheit for performances and rehearsals. If circumstances occur which cause the temperature to exceed these limits despite the best efforts of the Employer, then temporary devices such as space heaters and fans shall be provided in an attempt to alleviate the condition. If during a performance the temperature is above seventy-five (75) degrees Fahrenheit the Employees shall be allowed to remove neckties and/or jackets.

Section 5. Parking.

The Employer shall use best efforts to arrange for discounted parking near The Shubert Theater for Employees.

ARTICLE XXIV

SEVERABILITY

In the event that any portion of this Agreement is determined by a federal agency or court of competent jurisdiction to be unlawful, the remainder of this Agreement shall remain in full force and effect.

<u>ARTICLE XXV</u>

DURATION

This Agreement shall be effective for performances of presentations commencing on September 1, 1997 and shall remain in full force and effect until the conclusion of the final performance commencing on August 31, 2000 and from year to year thereafter unless either party notifies the other in writing no later than ninety (90) days prior to August 31 of 2000 or of any subsequent year that it desires to modify, amend or terminate this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed.

TREMONT THEATER, INC. Authorized Signature	BOSTON MUSICIANS'ASSOCIATION AFM LOCAL 9-535 W Ell Howling - Takeplus Authorized Signature
WILLIAM TAYLOR Print Name	SUE EUGN HOLSHMAN - TOUTHE PAIR Print Name
VICE PRESIDENT Title	Penders Title
12/1/98	Nov. 24, 1998 Date

APPENDIX A - Shubert (Tremont)

I. MUSICAL, OPERETTA, MISCELLANEOUS OTHER PRESENTATIONS AND PRIVATE FUNCTIONS

	9/1/97	<u>9/1/98</u>	9/1/99
A. <u>Weekly Rate</u>			
1. Eight (8) Performances			
Monday through Saturday;	***************************************	3 7	3%
No performance Sunday [8/0]	\$1002.25	\$1032.32	1063.29
 Seven (7) Performances Tuesday through Saturday; One (1) Performance Sunday 			
[7/1]	\$1002.25	\$1032.32	\$1063.29
3. Six (6).Performances Tuesday through Saturday; Two (2) Performances Sunday [6/2]	\$1039.84	\$1071.04	\$1103.17
B. Per Performance (Applied only when no weekly rate is applicable or for Sunday performances in excess of the weekly performance schedule as specified above)			
1. Monday through Saturday	\$137.81	\$141.94	\$146.20
2. Sunday	\$144.08	\$148.40	\$152.85
3. Midnight - additional per musician	\$ 21.42	\$22.06	\$22.72

			,
	<u>9/1/97</u>	<u>9/1/98</u>	9/1/99
C. <u>Performance Overtime</u> 1. Performances over eight (8) per work week	\$144.08	\$148.40	\$152.85
2. Per 15-minutes:			
a. 8/0 Performance Configuration	\$ 15.66	\$ 16.13	\$16.61
b. 7/1 Performance Configuration	\$ 15.66	\$ 16.13	\$16.61
c. 6/2 Performance Configuration	\$ 16.24	\$ 16.72	\$17.22
d. Per Performance (Applicable only	when no weekly ra	le is applicabl	e)
(i) Monday - Saturday	\$ 17.22	\$ 17.73	\$18.26
(ii) Sunday	\$ 18.00	\$ 18.54	\$19.10
(iii) Midnight: Double Applicable	e Performance Rate	per 15 minute	25
D. <u>Rehearsals</u> (See Article VIII)			
1. Monday through Sunday a. Hourly (prior to 6:00 p.m.)	\$ 26.78	\$ 27.58	\$28.41
b. Evening (6:00 p.m. to midnight):	Performance Rate		
c. Hourly (extending after midnight) :	Performance Over	time Rate	
d. Hourly (commencing after midnight)	Midnight Perform	ance Rate	,
e. Dress/Open	Performance Rate		
f. Prior to Curtain Time One Hour or Two Hour Call	Pro-Rate Applicab	le Performan	ce Rate

E. New Year's Eve: All services shall pay one hundred and fifty percent (150%) of Applicable Rate

	II. E	BALLET AND OPERA:	9/1/97	9/1/98	9/1/99
	A.	Weekly Rates			,
		1. Seven (7) performances			an 010 20
		Monday-Saturday	\$954.18	\$982.82	\$1012.30
		2. Seven (7) performances			
		Tuesday-Saturday; one (1)	\$1090.48	\$1123.19	\$1156.88
	******	performance Sunday [7/1]	**************************************	41 4 4 4 4 4 4 7	
		3. Six (6) performances			
		Monday-Saturday; two (2)	\$1090.48	\$1123.19	\$1156.88
		performances Sunday [6/2]	4.070.10	4-1	,
		4. Eight (8) performances	## 000 AD	#1177 10	si156.88
		Monday-Saturday	\$1090.48	\$1123.19	\$1120.00
	В.	Per Performance			
		(Applied only when no			
		weekly rate is applicable	the second construction of the second constructi		
		or for Sunday performances			
		in excess of the weekly performance schedule as			
		specified above).	\$149.93	\$154.42	\$159.05
		•			
	C.	Performance Overtime			
		1. Performances over		mása 45	ም124 ግቢ
		eight (8) per week	\$156.75	\$161.45	\$166.29
		2. Per 15-minutes:			
		a. 7/0 Performance		* * 7 50	C10 DE
		Configuration	\$ 17.02	\$ 17.53	\$18.05
		b. 7/1 Performance			
		Configuration	\$ 17.02	\$ 17.53	\$18.05
		c. 6/2 Performance			
		Configuration	\$ 17.02	5 17.53	\$18.05
		d. 8/0 Performance			
		Configuration	\$ 17.02	\$ 17.53	\$18.05
		e. Per Performance			
		e. Per Perioritance (Applied only when			
		no weekly rate is			
		applicable)	\$ 18.74	\$ 19.30	\$19.88
41		•			

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		•	<u>9/1/97</u>	<u>9/1/98</u>	<u>9/1/99</u>
D.	<u>Rehea</u>	rsals (See Article VIII)	•		
	1.	Monday through Sunday			
		a. Hourly (prior to 7:00 p.m.)	\$26.78	\$27.58	\$28.41
		b. Evening (7:00 p.m.to midnight)	Performance	Rate	
		c. Hourly (extending after midnight)	Performance	Overtime Rate	
		d. Hourly (commencing after midnight)	Midnight Per	formance Rate	•

Performance Rate

Pro-rata Applicable Performance Rate

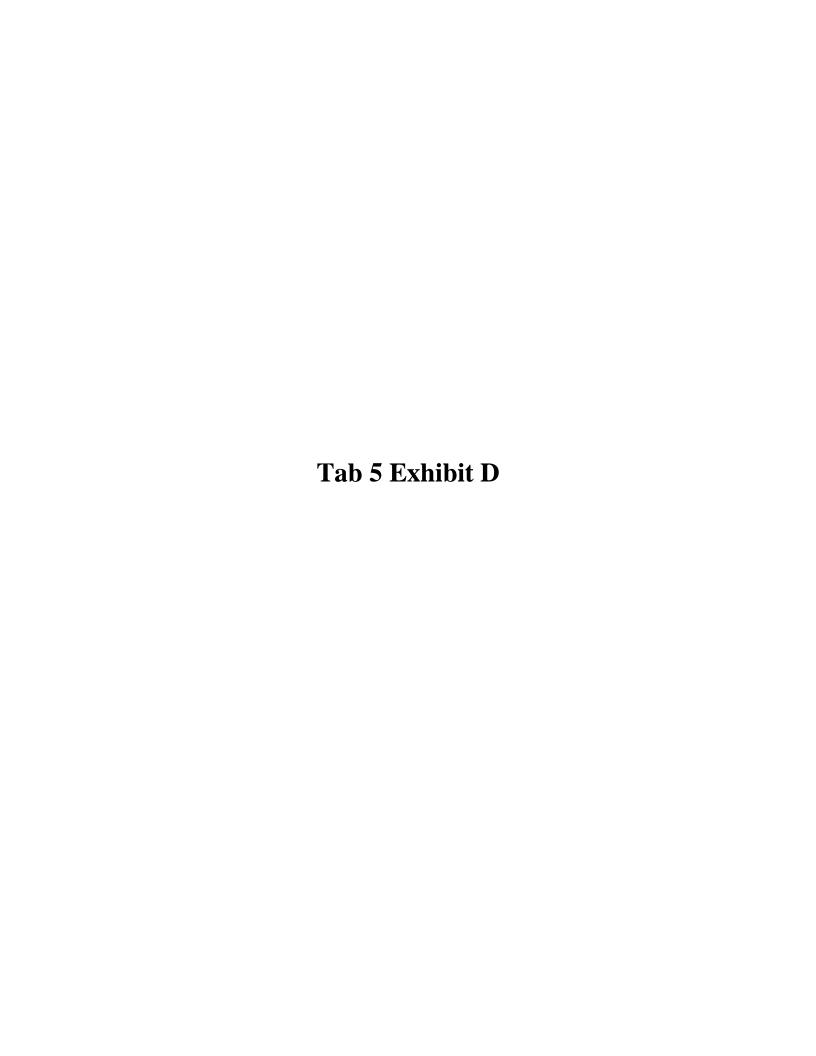
E. <u>New Year's Eve:</u> All services shall pay time and one-half (150%) of the Applicable Rate

e. Dress/Open

f. Prior to curtain

One Hour Call

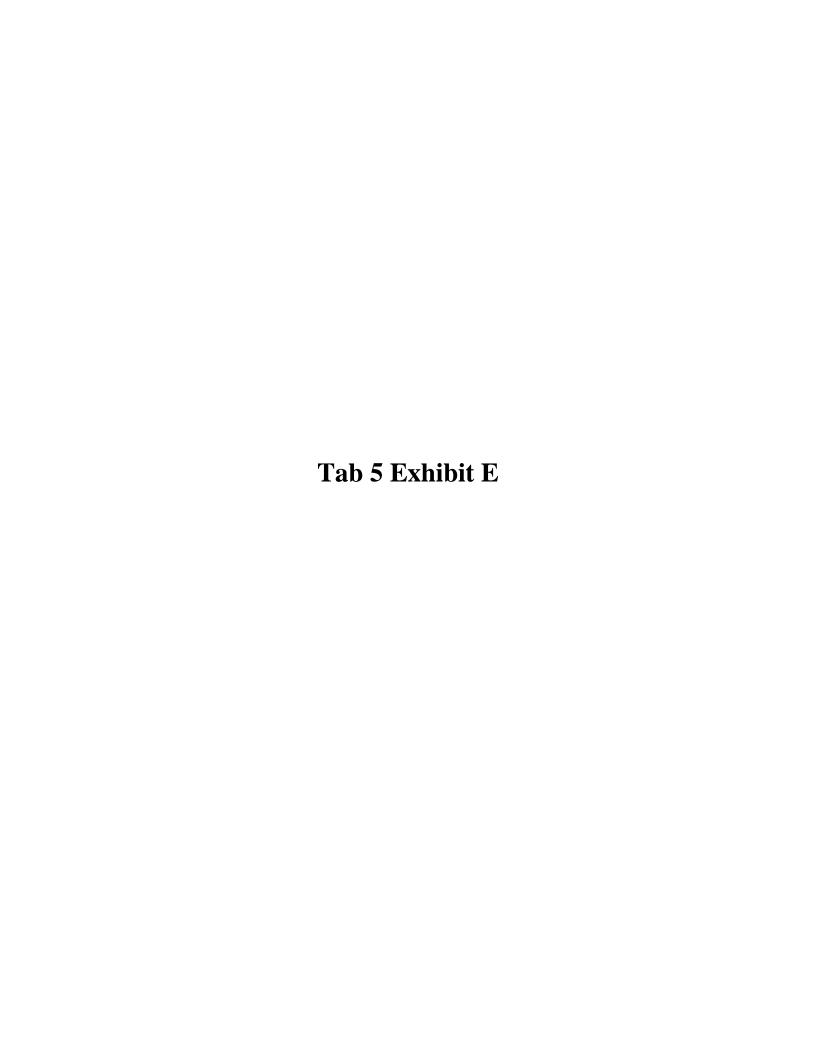
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SHOW LISTING 2014-2015

SHOWS THAT DID NOT REQUIRE LOCAL MUSICIANS		N
Show Name	Date	Number of Performances
Rain: A Tribute to the Beatles	2/21-2/22/14	3
Shen Yun Performing Arts	2/28-3/2/14	4
Chelsea Handler	3/7/2014	2
Heartbeat of Home	3/25-4/6/14	16
Alvin Ailey American Dance Theater	5/1-5/4/14	5
Eddie Izzard	5/8-5/10/14	3
il Divo	5/16/2014	1
Al Pacino	6/27/2014	1
Bill Gaither Vocal Band	9/5/2014	1
Jason Mraz	9/12-9/13/14	2
Walden Woods Benefit Concert- The Eagles	9/16/2014	1
Roberto Carlos	10/4/2014	1
Neil Young	10/5-10/6/14	2
Theresa Caputo	10/7-10/8/14	2
Dalai Lama	10/30/2014	1
Ryan Adams	11/18/2014	1
Yusuf/Cat Stevens	12/7/2014	1
Bill O'Reilly & Dennis Miller	12/6/2014	1
The Piano Guys	12/9/2014	1
Joe Bonamassa	1/21/2015	1
Anderson Cooper & Andy Cohen	3/21/2015	1
Alvin Ailey American Dance Theater	3/263-29/15	5
Jerry Seinfeld	4/10/2015	2
John Mellencamp	4/15/2015	1
Wait, WaitDon't Tell Me!	4/16/2015	1
Nashville	5/2/2015	1
Sufjan Stevens	5/4/2015	1
Paramore	5/5/2015	1
Crosby Stills & Nash	5/19/2015	1
Daniel Tosh	6/19/2015	2
Mormon Tabernacle Choir	7/6/2015	1
Move - Live On Tour	7/7/2015	1
Diana Ross	9/19/2015	1
Josh Groban	9/25/2015	1
Kraftwerk	10/3/2015	1
Things Your Man Won't Do	10/22/2015	1
Ringo Starr and His All Star Band	10/23/2015	1
Festival of Praise	10/29/2015	1
Jethro Tull	11/5/2015	1
Gladys Knight & The O'Jays	11/7/2015	1
Elf	11/17-12/6/15	24
Total		100

SHOWS REQUIRING LOCAL MUSICIANS		
Show Name	Date	Number of Performances
Annie	11/5-11/16/14	16
White Christmas	12/16-12/28/14	16
Total		32



Hours Worked by Musicians in Prior Two Years

	<u>Musician</u>	2015 Hours	<u>2014 Hours</u>
1.	Bowlby, Robert	0	105
2.	Ferland, Rod	0	105
3.	Pinto, Mark	0	105
4.	Pyatt, Larry	0	105
5.	Teboe, Dana	0	105
6.	Ambroszewski, Michael	0	53
7.	Hill, Ross	0	53
8.	Lewis, Charles	0	53
9.	Melley, Neal	0	53
10.	Plummer, Rebecca	0	53
11.	Pope, Ken	0	53
12.	Vint, William	0	53
13.	Rivard, Michael	0	53
14.	Cash, Julia	0	52
15.	Curry, Michael	0	52
16.	Kelly, Richard	0	52
17.	Cook, Ben	0	19

Wang Theatre Show: White Christmas

Musician's Payroll W/E: 12/28/14

Last First	Reh. Hrs.	Reh. Amt.	Sound Ck	# Perfs	Perf Amt	Sub-Total	% Add	TOTAL
1 Pinto, Mark				8 Performances	\$2,080.00	\$2,080.00	50%	\$3,120.00
2 Bowlby, Robert				8 Performances	\$2,080.00	\$2,080.00	35%	\$2,808.00
3 Ferland, Rod				8 Performances	\$2,080.00	\$2,080.00	50%	\$3,120.00
4 Vint, William				8 Performances	\$2,080.00	\$2,080.00	60%	\$3,328.00
5 Pope, Ken				8 Performances	\$2,080.00	\$2,080.00		\$2,080.00
6 Pyatt, Larry				8 Performances	\$2,080.00	\$2,080.00	35%	\$2,808.00
7 Hill, Ross				8 Performances	\$2,080.00	\$2,080.00		\$2,080.00
8 Lewis, Charles				8 Performances	\$2,080.00	\$2,080.00		\$2,080.00
9 Teboe, Dana				8 Performances	\$2,080.00	\$2,080.00	10%	\$2,288.00
10 Melley, Neal				8 Performances	\$2,080.00	\$2,080.00		\$2,080.00
11 Plummer, Rebecca				8 Performances	\$2,080.00	\$2,080.00	25%	\$2,600.00
12 Rivard, Michael				8 Performances	\$2,080.00	\$2,080.00		\$2,080.00
13 Ambroszewski, Michael				8 Performances	\$2,080.00	\$2,080.00	80%	\$3,744.00
14						\$0.00		\$0.00
15 Buda, Fred - Leader/Contracto)r **					\$4,160.00		\$4,160.00
16 ** No Pension Payment								
17								
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23								
24								
25				. <u> </u>				
					TOTAL PAG	E 1		\$38,376.00

Wang Theatre Show: White Christmas

Musician's Payroll W/E: 12/21/14

	Last First	Reh. Hrs.	Reh. Amt.	Sound Ck	# Perfs	Perf Amt	Sub-Total	% Add	TOTAL
1	Pinto, Mark	5	\$260.00	\$ 86.66	8 Performances	\$2,080.00	\$2,426.66	50%	\$3,639.99
	Bowlby, Robert	5	\$260.00	\$ 86.66	8 Performances	\$2,080.00	\$2,426.66	35%	\$3,275.99
	Ferland, Rod	5	\$260.00	\$ 86.66	8 Performances	\$2,080.00	\$2,426.66	50%	\$3,639.99
4	Vint, William	5	\$260.00	\$ 86.66	8 Performances	\$2,080.00	\$2,426.66	60%	\$3,882.66
5	Pope, Ken	5	\$260.00	\$ 86.66	8 Performances	\$2,080.00	\$2,426.66		\$2,426.66
6	Pyatt, Larry	5	\$260.00	\$ 86.66	8 Performances	\$2,080.00	\$2,426.66	35%	\$3,275.99
7	Hill, Ross	5	\$260.00	\$ 86.66	8 Performances	\$2,080.00	\$2,426.66		\$2,426.66
8	Lewis, Charles	5	\$260.00	\$ 86.66	8 Performances	\$2,080.00	\$2,426.66		\$2,426.66
9	Teboe, Dana	5	\$260.00	\$ 86.66	8 Performances	\$2,080.00	\$2,426.66	10%	\$2,669.33
10	Melley, Neal	5	\$260.00	\$ 86.66	8 Performances	\$2,080.00	\$2,426.66		\$2,426.66
11	Plummer, Rebecca	5	\$260.00	\$ 86.66	8 Performances	\$2,080.00	\$2,426.66	25%	\$3,033.33
12	Rivard, Michael	5	\$260.00	\$ 86.66	8 Performances	\$2,080.00	\$2,426.66		\$2,426.66
13							\$0.00		\$0.00
14							\$0.00		\$0.00
15	Buda, Fred - Leader/Contractor **						\$4,853.32		\$4,853.32
16	** No Pension Payment								
17									
18									
19					T				
20									
21									
22									
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24									
25					. <u> </u>				
TOTAL PAGE 1							\$40,403.89		

Wang Theatre Show: White Christmas

Musician's Payroll W/E: 12/21/14

	Last	First	Reh. Hrs.	Reh. Amt.	Sound Ck	# Perfs	Perf Amt	Sub-Total	% Add	TOTAL
1								\$0.00		\$0.00
2								\$0.00		\$0.00
3								\$0.00		\$0.00
4								\$0.00		\$0.00
5								\$0.00		\$0.00
6								\$0.00		\$0.00
7								\$0.00		\$0.00
8								\$0.00		\$0.00
9								\$0.00		\$0.00
10								\$0.00		\$0.00
11								\$0.00		\$0.00
12								\$0.00		\$0.00
13	Ambroszewski, M	lichael	5	\$260.00	\$ 86.66	8 Performances	\$2,080.00	\$2,426.66	80%	\$4,367.99
14								\$0.00		\$0.00
15										\$0.00
16										
17										
18										
19										
20			-							
21			-							
22			-							
23			-							
24										
25							TOTAL PAG			

Wang Theatre Show: Annie

Musician's Payroll W/E: 11/16/14

Last First	Reh. Hrs.	Reh. Amt.	Sound Ck	# Perfs	Perf Amt	Sub-Total	% Add	TOTAL
1 Pinto, Mark				8 Performances	\$2,080.00	\$2,080.00	60%	\$3,328.00
2 Bowlby, Robert				8 Performances	\$2,080.00	\$2,080.00	50%	\$3,120.00
3 Ferland, Rod				8 Performances	\$2,080.00	\$2,080.00	70%	\$3,536.00
4 Cash, Julia				8 Performances	\$2,080.00	\$2,080.00	20%	\$2,496.00
5 Curry, Michael				8 Performances	\$2,080.00	\$2,080.00		\$2,080.00
6 Pyatt, Larry				8 Performances	\$2,080.00	\$2,080.00	50%	\$3,120.00
7 Kelly, Richard				8 Performances	\$2,080.00	\$2,080.00	20%	\$2,496.00
8 Teboe, Dana				8 Performances	\$2,080.00	\$2,080.00	10%	\$2,288.00
9 Cook, Ben				3 Performances	\$780.00	\$780.00	25%	\$975.00
10						\$0.00		\$0.00
11						\$0.00		\$0.00
12						\$0.00		\$0.00
13						\$0.00		\$0.00
14						\$0.00		\$0.00
15 Buda, Fred - Leader/Contractor **					\$4,160.00	\$4,160.00		\$4,160.00
16 Omitted from week 1		\$520.00	\$ 173.32			\$693.32		\$693.32
** No Pension Payment								
18								
19								
20								
21								
22								
23								
24								
25				. <u> </u>				
					TOTAL PAGE 1			\$28,292.32

Wang Theatre Show: Annie

Musician's Payroll W/E: 11/09/14

Last First	Reh. Hrs.	Reh. Amt.	Sound Ck	# Perfs	Perf Amt	Sub-Total	% Add	TOTAL
1 Pinto, Mark	4	\$260.00	\$ 86.66	8 Performances	\$2,080.00	\$2,426.66	60%	\$3,882.66
2 Bowlby, Robert	4	,	\$ 86.66	8 Performances	\$2,080.00	\$2,426.66	50%	\$3,639.99
3 Ferland, Rod	4		\$ 86.66	8 Performances	\$2,080.00	\$2,426.66	70%	\$4,125.32
4 Cash, Julia	4		\$ 86.66	8 Performances	\$2,080.00	\$2,426.66	20%	\$2,911.99
5 Curry, Michael	4	\$260.00	\$ 86.66	8 Performances	\$2,080.00	\$2,426.66		\$2,426.66
6 Pyatt, Larry	4	\$260.00	\$ 86.66	8 Performances	\$2,080.00	\$2,426.66	50%	\$3,639.99
7 Kelly, Richard	4	\$260.00	\$ 86.66	8 Performances	\$2,080.00	\$2,426.66	20%	\$2,911.99
8 Teboe, Dana	4	\$260.00	\$ 86.66	8 Performances	\$2,080.00	\$2,426.66	10%	\$2,669.33
9 Cook, Ben				1 Perf	\$260.00	\$260.00	25%	\$325.00
10 Cook, Ben	4	\$260.00	\$ 86.66	1 audit	\$260.00	\$606.66		\$606.66
11						\$0.00		\$0.00
12						\$0.00		\$0.00
13						\$0.00		\$0.00
14						\$0.00		\$0.00
15 Buda, Fred - Leader/Contractor **						\$4,160.00		\$4,160.00
16 ** No Pension Payment								
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18								
19								
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25				. <u> </u>				
					TOTAL PAG	E 1		\$31,299.59

\$31,299.59 TOTAL PAGE 1



WAGE SCALE V. CLASS B MISCELLANEOUS

Definition: Class B Miscellaneous Wage Scales apply to the following types of
engagements: Fairs, Fashion Shows; Funeral Processions; Homes for the Blind;
Nursing Homes, Recuperative Centers, Hospitals, Parades, Public Service;
American Sports Events

Amuteur Sports Events.	
Any 2 Hours Or Less Until Midnight:	\$77
Overtime before midnight, per ½ hour or less:	
Overtime after midnight, per 1/4 hour or less :	\$42
Leader's Wage:	
3 players or less:	scale plus 25%
4-10 players:	scale plus 50%
11 or more	double scale
One hour Labor/Public relations Event	\$44
Leader	25% Additional
PENSION CONTRIBUTION (AFM-EPF): 12.5	80% ja 2015-16, 13.50% ja
2016-17, 14.00% in 2017-18 additional of total	

WAGE SCALE VI

College, Amateur Musicals and Musicals Produced By Bona-fide Charitable Organizations

Performance: 3 hours maximum	. \$139
Rebearsal: per hour, 3 hour minimum call	\$27
Performance Overtime: per 1/2 hour or less	537
Doubling: 1st double 20%, 2nd and 3rd doubles 15% each, each add	litional double
10% each, See Addenda for definitions of percussion doubling a	nd instruments

not considered doubles

Leader: A member shall be designated as "leader" for all services, and shall receive double sideperson's wages.

Cartage (Harp, Percussion, Bass etc.): See addends

College and/or Amateur Musicals which are produced for profit shall be governed by Wage Scale IV (Class A Miscellaneous).

PENSION CONTRIBUTION (AFM-EPF): 12.50% in 2015-16, 13.50% in 2016-17, 14.00% in 2017-18 additional of total scale wages.

WAGE SCALE VII

DANCE RECITALS

Amateur Dance Recitals Taking Place in Theaters shall be governed by the applicable single performance rates. If taking place elsewhere, class A Miscellaneous Wage Scales shall apply.

WAGE SCALE VIII

STEADY ENGAGEMENT WAGE SCALES

Not applicable to private functions or Saturday night only engagements

A Steady Engagement is an engagement occurring at the same place during the same hours for the same employer for 1 session or more for 4 or more consecutive weeks.

NOTE: Engagements not fulfilling the above requirements do not constitute Steady Engagements, and shall be paid per Wage Scale IV (Class A Miscellaneous). Any Consecutive 2 Hours Or Less Until 7:00 pm

THE COMMENTE DIRECTOR OF LESS CHILL FIRE DIRECTOR	
Sideperson per service:	89
Solo Performer per service \$1	33
Leader per service: SI	12
Any Consecutive 3 Hours Or Less Until 12:00 Midnight	
Sideperson per night:	12
Solo Performer per service	68
Leader per service: \$1	48
Any Consecutive 4 Hours Or Less Until 12:00 Midnight*	
Sideperson per night;	39
Solo Performer per service: \$2	12
Leader per service	85
Overtime: per 1/4 hour or less:	
Sideperson	27
Solo Performer \$	43
Leader S	
* If engagement goes past 12 midnight, add 10% to the above rates.	

Regular musicions performing on steady engagements are not allowed to play between sets. On all Steady Engagements of live (5) hours there must be a general intermission of thirty (30) minutes. On Steady Engagements with a show, musicions may not perform for more than one hour and forty-live minutes, and must

then receive a proper Intermission.

N.B. - The above scale wages do not include MA payroll taxes and associated fees as required by law. Please contact the Local for a payroll service reterral. PENSION CONTRIBUTION (A FM-EPP): 12,50% in 2015-16, 13,50% in

WAGE SCALE IX

Public Engagements With Paid Admission: Star Attractions, Trade Shows, Night Clubs, Etc.

A member shall be designated as "leader" for all services and rec the sideperson's wages. Single Performance Of 3 Hours Or Less:	eive double
	\$224
Rebearsal: minimum 3 hour call beginning no earlier than 10 AM (requiring 10 minute break per/hour).	
One Hour Sound Check/Senting rehearsal: Starting not earlier than two hours before the performance:	. \$74
Doubling: 1st double 20%; 2nd and 3rd doubles 15% each; all other See addenda for definitions of percussion doubling and insu- considered doubles.	
Principal Pay: Violin I, Trumpet I, Drums	20%
Electronic Musical Device (EMD) premium	25%
Cartage: See addenda	
Performance Overtime: per 15 minutes or less - 150% of the hourly prate.	performance
Rehearsal Overtime: per half-hour or less - 150% of the hourly rehe	arsal rate.
Parking; see addenda	
Rehearsal Intermission: 10 minutes per hour, off the stand	
Meats after reheursals: On any evening engagement preceded by a n ends 2 hours or less before such evening engagement, each music paid for dinner (\$26,00) unless a full sit-down hot meal is provide no udmission charge, Wage Scale IV shall apply to this type of en	iun shall be d. If there is
Fravel, Air Mileage, Lodging: See addenda under "Travel"	

PENSION CONTRIBUTION (AFM-EPF): 12.50% in 2015-16, 13.50% in 2016-17, 14.00% in 2017-18 additional of total scale wages.

WAGE SCALE X

Professional Musical Theater not covered under terms of a Collective Bargaining Agreement

	shall be designated as "leader" for all services and re- person's wages	eceive dauble
Single Peri	formance Of 3 Hours Or Less:	, \$264
Rehearsal:	minimum 3 Hour call beginning no earlier than 10 AM ng 10 minute break per/hour).	
	Sound Check/senting rehenrsal:	
Starting	not earlier than two hours before the performance.	
	ats of performance rate. Must end no later than 1 hr. pric ance, 1 Hour minimum with overtime in increments of 1	
Doubling:	1st double 20%; 2nd and 3rd doubles 15% each; all other	ers 10% each.

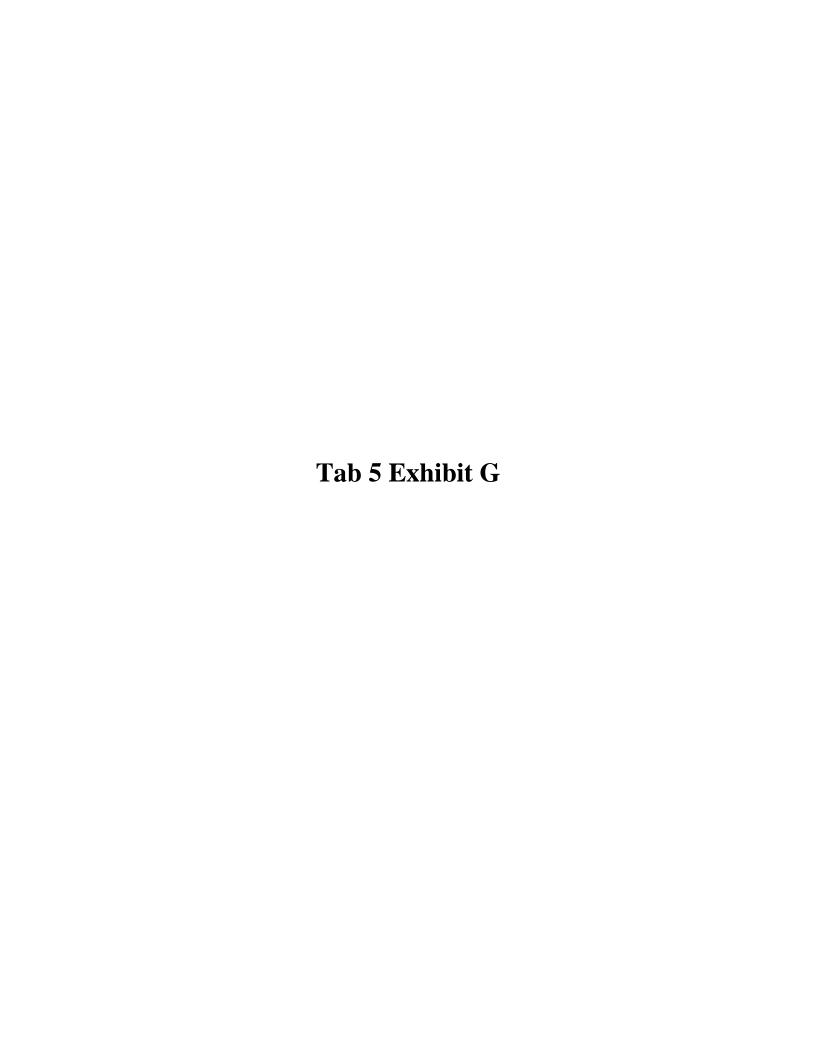
See addenda for definitions of percussion doubling and instruments not considered doubles.

Principal Pays Violin I. Towney I. Depres.

Performance Overtime: per 15 minutes or less - 150% of the hourly performance rate.

Rehearsal Overtime: per half-hour or less - 150% of the hourly rehearsal rate. Rehearsal Intermission: 10 minutes per hour, off the stand Travel, Air Mileage, Lodging: See addenda under "Travel"

PENSION CONTRIBUTION (AFM-EPF): 12-50% in 2015-16, 13.50% in 2016-17, 14.00% in 2017-18 additional of total scale wages.





December 9, 2014

Blue Skies Tour LLC 42 Maple Street, 2nd Fl Summit, NJ 07901 Attn: Nancy Gabriel

Re: "Irving Berlin's White Christmas" at the Wang Theater December 16-28, 2014

Dear Nancy:

This letter shall constitute the agreement (the "Agreement") between Wang Theatre Inc. ("WTI"), and Blue Skies Tour LLC ("Producer") in connection with the production and presentation of the live theatrical show entitled, "Irving Berlin's White Christmas" (the "Show") at the Citi Performing Arts Center/Wang Theater (the "Building") in Boston, MA on December 16, 2014 through December 28, 2014, on the terms and conditions set forth herein.

I. LICENSE OF BUILDING FOR SHOW PRESENTATION:

- A. Subject to the terms hereof, WTI hereby grants Producer the license and privilege (the "License") to use the area designated as the theater (the "Premises") within the Building for load-in, technical rehearsals and preparations, rehearsals, presentation and load-out of the Show (collectively, the "Event"), during the period commencing at 8:00 A.M. on December 15, 2014 and ending at approximately 4:30 A.M. or the conclusion of load-out, whichever is later but not to extend beyond 8:00 A.M. on Monday, December 29, 2014 (the "Period"), in accordance with the schedule set forth in subsection II, B. below.
- B. Producer will provide and pay for a fully produced and cleared Show with all rights required to present, promote, advertise and market the Show, including but not limited to: all talent and other cast; music, orchestrations, charts and all other intellectual property; all rights, licenses and clearances; parking permits or arrangements for Show touring trucks; supplemental sound, lights and audio-visual equipment; and any other elements, equipment or other materials (which are not included in the licensed Premises) and all associated payments and fees. Producer will perform necessary set modifications to be mutually agreed to conform the scale of the Show to the size of the stage/proscenium of the Premises if and as required.

Π. TERM; USE PERIOD:

- A. <u>Term</u>: The term of this Agreement will commence as of the date hereof and continue through "Final Settlement" (as defined in section V.C. below) for the Show engagement at the Premises ("Term").
- B. <u>Use of Building</u>. The Premises will be available (excluding the Dark Days as defined below) for the use of the Show ("Use Period"), based on the following schedule:
 - Load-in/Rehearsals Monday, December 15, 2014 at 6:00 a.m. through Tuesday,

December 16, 2014 up to the time of the first performance.

- Show Performances –Tuesday, December 16, 2014, through Sunday, December 28, 2014 ("Show Run" or "Engagement").
- Load-Out following the last performance of the Show.

Sixteen (16) performances of the Show are currently contemplated as set forth in the show schedule attached hereto as Schedule A and incorporated herein; however, if circumstances so warrant, MSG and Producer may mutually determine to either reduce the number of Show performances (in which case the Guarantee will be reduced on a pro-rata basis as set forth in subsection V.B. 1. below) or alter the Show performances schedule.

- C. WTI retains the exclusive right to license the Premises to third parties during the Use Period: (i) on the dark days of Monday, December 22, 2014 and (ii) before 5:00 P.M on any other days during the Period when only a. Show performance is scheduled after 7:00 PM (collectively, "Dark Days"). Producer will be notified as to any such uses by third parties on Dark Days. If applicable WTI will be responsible for any expenses incurred in the removal and set up of Producer's staging and sets for the purposes of any such third party use. Such third party use may include the presentation of an event on the stage of the Premises without removing Producer's staging and sets (i.e., in front of such staging and sets). A member of Producer's staff may be present at any on-stage event and WTI will be responsible for any costs incurred as a result of such third-party on stage event(as between the parties hereto).
- D. Producer will notify WTI of Producer's estimated arrival time at the Building. Unless otherwise specifically agreed in writing by WTI, all load-in work will be conducted between the hours of 6:00 a.m. to 11:59 p.m. on the load-in days specified in subsection II.B above. Any penalties or additional expenses incurred as a result of work outside of these hours will be deemed a Company Charge as defined below.
- III. PRODUCER WILL PROVIDE: Producer will provide (or cause to be provided) the following in connection with the Show at the Building, at Producer's sole cost and expense (except as otherwise noted below):
- A. A fully produced, Actor's Equity ("AE") compliant Show including: the Show concept, staging, choreography, scenic design, costume design, script and existing Show physical elements (i.e., scenery/sets, props and costumes).
- B. the right and license to use of the tradenames and trademarks "Irving Berlin's White Christmas" and associated logos and designs, Show imagery and cast member names and images (collectively, "White Christmas Marks") in connection with the advertising, marketing, promotion and presentation of the Show at the Premises as to which Producer represents and warrants that it has the right to provide to WTI hereunder.
- C. Funding of the Show mount, production and operating costs (except as otherwise set forth herein).
- D. The engagement of the cast for the Show in compliance with all applicable AE rules and requirements. From time-to-time during the Term, Producer will provide members of the Show cast or additional hired promotional cast for promotional appearances, the cost for which shall be

part of the Show marketing budget ("Marketing Budget") to be funded by WTI (unless such costs are covered by a third party).

- E. Except as set forth in section IV.G below, the engagement of all musicians (collectively. "Musicians") for the Show (in compliance with all applicable local union requirements as required). WTI shall not be required to enter into any collective bargaining or other agreement in connection with the Musicians or otherwise in connection with the Show. Producer will furnish (at its sole cost and expense and not a Show Expense) viable charts for the parts to be played by the Musicians. For clarification, there are fifteen (15) musicians plus one (1) Conductor who perform the Show music. Producer will travel with two (2) musicians plus one (1) Conductor, all of whom shall be paid directly by Producer. The remaining thirteen (13) Musicians will be hired locally as a documented show expense (in compliance with all applicable local union requirements).
- F. Applicable music performance rights fees for Show music (which may be paid to the applicable performing rights society directly by Producer) and any other music rights fees required for the Show music and any associated advertising and marketing.
- G. Provision of templates for marketing materials for WTI's use (under section IV(D) below), for advertisements (including print, television, radio, electronic/computer media, outdoor displays, billboards and direct mail), brochures, artwork and promotion and publicity materials in connection with the Show, as well as consultation and assistance with respect to marketing plans, group sales, advertising, public relations and publicity, all of which shall be administered and implemented by WTI. All such materials implemented and/or placed by WTI as of the date of execution hereof are hereby deemed approved by Producer. Thereafter, Producer will have the right to pre-approve (not to be unreasonably withheld, delayed or conditioned), the style/form of any White Christmas Marks contained in any templates; provided, however, that once the style/form of the White Christmas Marks has been approved by Producer, WTI will not be required to seek future approvals for further uses.
- H. Insurance for all "Losses" (as defined in section XIII. A. below) arising in connection with the Event and use of the Building for the Event, and the full indemnity, hold harmless and defense of WTI in connection with any such Losses as set forth in subsection XIII. A. below.
- IV. WTI WILL PROVIDE: WTI will provide (or cause to be provided) the following items in connection with the Show at the Premises, the costs for which will be deemed "Show Expenses" (as defined below):
- A. Use of the Premises for which WTI will receive payment of the "Fixed Building Expenses," as such term is herein defined (in section V. A. 4. below).
- B. "Front-of-House Labor" (i.e., ushers, tickets takers and other front-of-house personnel; cleaning/maintenance crew; security personnel; venue management; in-house public relations/marketing personnel; and box office personnel) for the operation of the Premises during the Use Period, in a number sufficient, in WTI's sole, reasonable, business discretion, to satisfy the normal requirements for events of this nature, payment for which is included in the amount of Fixed Building Expenses.
 - C. "Local Back of House Labor" (i.e., the production labor including stagehands,

Teamsters, wardrobe and hair labor to be provided by WTI during the Use Period, in a number sufficient, in WTI's reasonable, business discretion in consultation with WTI and as mandated under any applicable collective bargaining agreements to satisfy the normal requirements for events of this nature) for which WTI will be paid "Local Back-of-House Labor Expenses" (as defined in section V. A. 4 below). The Local Back of House Labor will be provided during loadin, load-out, performances, continuity calls prior to a performance (not to be held more than 1.5 hours before advertised curtain time) and one rehearsal/sound check immediately prior to the first public performance only. (Stagehands and/or teamsters as applicable will also be provided for strip and restore, mopping, truck loading/unloading (during load-in and load-out), spotting calls), subject to the following:

- 1. Any required stagehands and teamsters for rehearsals (after the first public performance) or for work calls (including any overtime charges in connection with the foregoing) will be a Company Charge (not Local Documented Expenses);
- 2. Any wardrobe and hair labor provided for so called "Daywork", rehearsals after the first public performance and/or work calls will be a Company Charge (including an associated overtime charges) and not Local Documented Expenses. "Daywork" includes any wardrobe and hair labor provided for any calls following the conclusion of a performance, and laundry or maintenance calls during the load-in, prior to, during and/or after a Show performance, and/or during load-out, as we ll as any rehearsal calls following the first performance.
- 3. Any actual cost or expense associated with Americans with Disabilities Act requirements for the Engagement (i.e., signed performances for the hearing impaired, audio described performances, or captioning) will be a Local Documented Expense; provided that, WTI will have no obligation to make any permanent or semi-permanent renovations or modifications to the Building (e.g., ramps, elevators, etc.). Additionally, if an ADA interpreter or other ADA-related labor is required by law but not available locally, associated travel expenses for such labor shall be deemed a Local Documented Expense. Producer will cooperate with WTI and Building with respect to any disability-related services provided during a performance. If ADA compliance is not required by law for the Engagement, any expenses incurred by WTI for any such services requested by Producer will be a Company Charge.
- D. Advertising and marketing including implementation of the Marketing Budget (inclusive of marketing plans, media placement, "Group Sales", "Subscription Series" (as such terms are defined below), advertising, public relations and publicity for the Show). WTI will enter into agreements for Show marketing and media buys and produce the necessary marketing materials using the templates to be provided by Producer. WTI shall receive a "Group Sales Commission" in connection with the sale of tickets to the Show to groups of ten (10) or more ("Group Sales") and a "Subscription/Member Commission" in connection with the sale of tickets to Citi Performing Arts Center members/series subscribers ("Subscription Series") at the Building (as such terms are defined in section V.A. below).
- E. Advance ticket sales services through the Building box office (the "Box Office") including the set-up/operation of the box office and all related box office services and personnel

for the sale of tickets to the Show from the on sale date through the last performance of the Show during the Term when the Box Office is open.

- F. Available technical facilities and production equipment in the Premises, including house PA sound and theater lighting, house soft goods, Internet/telephone lines and local telephone service. Any charges for requirements or items arising as result of Producer's work calls and rehearsals after the first public performance of the Show, including but not limited to, additional equipment rental, (e.g., shop usage and shop equipment, compressed gas, paint, tape, stage flooring, hemp, talent requirements) and runners, will be a Company Charge unless the parties mutually agree in writing prior to the commencement of the Engagement that any associated charges be considered Local Documented Expenses. In the case of goods or services rented or purchased from a third party, WTI will charge the Producer the actual cost. Consistent with Building specifications and requirements, WTI will use commercially reasonable efforts to accommodate the requirements set forth in Producer's Technical Rider in order for smooth and efficient presentation of the Show at the Building.
- G. Engage thirteen (13) Musicians (plus a contractor) to augment the Musicians travelling with the Show with associated charges ("Musicians Costs") being considered as Local Documented Expenses. For clarification, fifteen (15) Musicians and one (1) Conductor will play during the Show. Producer will travel with two (2) Musicians and one (1) Conductor, all of whom are paid directly by Producer. The remaining thirteen (13) Musicians will be hired locally as a Local Documented Expense.

V. FINANCIAL TERMS/PAYMENTS/SETTLEMENT:

A. <u>Definitions</u>:

- 1. "Gross Box Office Revenue" ("GBOR") shall mean all revenue inclusive of all applicable taxes and Facility Charges derived from the sale of tickets to the Show at the Premises from any source whatsoever less any returns or refunds.
- 2. "Net Adjusted Gross Box Office Revenue" ("NAGBOR") shall mean the sum of Gross Box Office Revenue less "Ticket Deductions". "Adjusted Net Ticket Revenue" shall mean GBOR less the Ticket Deductions, excluding the Ticket Deductions in subsections 3 (d) and (e).
- 3. "Ticket Deductions" shall mean the total of the items listed below to be deducted from the Gross Box Office Revenue to arrive at Net Ticket Revenue. All Ticket Deductions will be retained by WTI (except as set forth in subsections 3(f) through 3(i) below) for its sole account (as between the parties hereto) at each weekly Preliminary Settlement.
 - a. Any applicable taxes on ticket revenue.
 - b. The "Facility Charge" herein defined as the per paid ticket amount of \$3.75 (included in the established price of each ticket).
 - c. Ticketmaster service charges/fees as applicable.
 - d. The "Group Sales Commission" herein defined as a fixed commission of ten (10%) percent of Net Adjusted Gross Box Office Revenue derived

from Group Sales tickets for the Show performances (exclusive of Saturday evening performances) which shall be inclusive of any other Ticket Commissions payable to third parties and Ticketmaster service charges/fees in connection with all Group Sales of tickets to the Show.

- e. The "Subscription/Member Commission" herein defined as a fixed commission of twelve (12%) percent of Net Adjusted Gross Box Office Revenue derived from the sale of tickets for the Show performances which are included in the Subscription Series which shall be inclusive of any other Ticket Commissions payable to third parties and Ticketmaster service charges/fees in connection with all Subscription/Member tickets sold to the Show.
- f. "Credit Card Commission(s)" herein defined as a seven (7%) percent commission inclusive of processing or service fees charged by or payable to credit card companies in connection with the purchase of tickets through the Ticketmaster System ("Ticketmaster") decreasing to five (5%) percent for purchases at the Box Office to be retained by WTI for its sole account (as between the parties hereto). Credit Card Commissions will be assessed on all tickets purchased whether over the internet, at outlets, by phones and/or any other method of remote or automated ticket distribution and/or at the Box Office (inclusive of the Group Sales Commission and/or the Subscription/Member Commission where applicable, (i.e. any ticket sold through WTI's Group Sales or Subscription/Member department for which the Group Sales Commission or Subscription/Member Commission is charged shall not be assessed a separate Credit Card Commission).
- g. The "Flash Sales Commission" shall mean the applicable commissions on Adjusted Net Ticket Revenue derived from the sale of Show tickets through a flash provider e.g., on Groupon or Living Social's websites ("Flash Sales"). This commission will cover any Credit Card Charges payable to third parties and all marketing Flash Sales expense, in connection with the sale of tickets to the Show. The Flash Sales Commission shall be paid to the applicable Flash Sales provider in accordance with the terms of the applicable agreement.
- h. "Discounts" shall mean the applicable discounts and/or rebates on tickets prices based on the particular performance date and time and the specific group purchasing the tickets as set forth in Schedule A.
- 4. "Show Expenses" shall mean the sum of all the costs to the Show as set forth in this Subparagraph V.A.4 below, which shall be deducted from Net Adjusted Gross Box Office Revenue to arrive at "Net Ticket Revenue" (as defined below). The amount of the applicable Show Expense will be paid/reimbursed to WTI (or retained by WTI out of NAGBOR) or paid to Producer if so noted below at the time of each weekly Preliminary Settlement. The estimates set forth herein are based on Producer's representations to WTI that Show performances will not exceed 2 hours 30 minutes in length (inclusive of intermission). Should performance length change or if Producer otherwise changes production requirements, then the above estimates may increase. The parties shall adjust and reconcile any such estimated amounts against

the actual expenses for Fixed Building Expenses/Local Back-of-House Labor at Preliminary Settlement.

- a. "Fixed Building Expenses" which shall mean the total amount of \$280,000 for the Use Period (or \$140,000 per week) to be paid to WTI in consideration of Producer's use of the Premises and WTI's provision of front-of-house labor (ushers, security and cleaners) at the Premises in connection with the Show. The Fixed Building Expenses will not require documentation for settlement purposes.
- b. "Local Documented Expense(s)" which shall mean the total of the following Show Expenses which shall require documentation for settlement purposes (and reconciled at settlement at actual cost and expense):
- 1. The Marketing Budget for the Show to be reimbursed to WTI in connection with advertising and promotion for the Show at the Premises, estimated to be approximately \$500,000.
- "Local Back-of-House Labor Expenses" shall mean all charges and 2. expenses for Local Back-of-House Labor, including without limitation, FICA, workers' compensation, unemployment insurance and payroll administration fees associated with such Local Back-of-House Labor, all of which shall be staffed as set forth herein in consultation with the Show's Technical Supervisors with WTI's specifications and as mandated under any collective bargaining agreement applicable to the Premises/Building, including, without limitation, all stagehands, teamsters, wardrobe and hair staff and other labor necessary or appropriate for load-in, rehearsals, technical rehearsals/preparation, performances and load-out of the Show at the Premises, estimated to be approximately \$300,000 for the Use Period. All labor furnished by WTI hereunder shall be subject to any applicable union minimum requirements and shall be paid at such rates as may be specified in applicable agreements and if no such rates shall be so specified, at the prevailing rate of wages, including full reimbursement for WTI's fringe benefit, payroll tax and other labor-related expenses.
- 3. "Local WTI Operating Expenses" shall mean all expenses incurred by WTI in connection with furnishing various elements, including, but not limited to: catering for cast and crew; the Musicians Costs (set forth in Section IV.G above; the cost to produce a program ("Program") to be distributed at no charge to Show patrons; equipment rental (spots and backline) from third parties and miscellaneous charges (e.g., fire, police, permits). The total amount of all of the foregoing is estimated to be approximately \$135,000 (which will be reconciled at settlement at actual cost) for the Use Period. Local WTI Operating Expenses shall not include, and WTI shall not be required to furnish, any personnel, services, equipment or materials that are to be furnished by Producer as set forth herein or are customarily provided by a theatrical producer of a touring show, all of which shall Producer's sole responsibility.
- c. The Producer Guarantee (to be paid to Producer as set forth below).
- d. The Producer Royalty (to be paid to Producer as set forth below).

- e. "Producer Fee" shall mean the amount of \$1.00 per ticket sold through Ticketmaster whether over the internet, at outlets or by phones to be paid to Producer.
- 5. "Net Ticket Revenue" ("NTR") shall mean any NAGBOR remaining after all Show Expenses have been deducted therefrom and paid to the party entitled to be paid same hereunder.
- 6. "Company Charge(s)" shall mean amounts to be paid by Producer out of any monies payable to it hereunder and not charged to the Show as Local Documented Expenses/Show Expenses or otherwise paid by WTI.

B. <u>Payments to the Parties</u>.

1. Guarantee; Producer Royalty.

- a. Producer will be paid a guarantee via wire of \$340,000 per week (the "Guarantee"), payable at the weekly Preliminary Settlements as set forth in section C below (which are anticipated to occur on December 16, 2014 for the first week of the Show Run and on December 23, 2014 for the second week of the Show Run. Any payments to Producer hereunder are subject to the full execution of this Agreement and Producer's provision of a WTI with a W-9. If there are less than sixteen (16) performances of the Show during the Show Run ("Performance Deficit"), due to Producer's acts or omissions or a "Force Majeure" resulting in resulting in Producer's inability to perform hereunder, Producer will pay/reimburse to WTI at "Final Settlement" (as defined below) an amount equal to the product of (A) \$42,500 multiplied by (B) the difference between (i) sixteen (16) and (ii) the number of total performances of the Show that comprised the Engagement. Similarly, in the event of a Performance Deficit in any week of the Show Run due to Producer's acts or omissions, MSG may reduce the amount of the next Installment payable hereunder by \$42,500 per each missed performance ("Per Performance Amount").
- b. Producer will receive a royalty of ten (10%) percent ("Producer Royalty") of NAGBOR to be calculated and paid at each weekly Preliminary Settlement for the Show engagement.
- c. Producer will receive a "Producer Fee" in the amount of \$1.00 per ticket sold through Ticketmaster whether over the internet, at outlets or by phones, paid at each weekly Preliminary Settlement.
- 2. <u>Fixed Building Expenses</u>: <u>Ticket Deductions</u>; <u>Show Expenses</u>. WTI will be paid the aggregate amount of applicable Fixed Building Expenses, all Ticket Deductions (except for any Discounts provided to patrons and the Producer Fee payable to Producer) and be paid/reimbursed the total amount of all of its Show Expenses hereunder (pro-rata for each week of the Show Run) at each weekly Preliminary Settlement.
- 3. Split of any NTR. To the extent any NTR remain after all of the above payments have been made to each respective party hereunder, there will be a further financial accounting at Final Settlement where any remaining NTR (i.e., any NAGBOR after deduction of Show Expenses; provided, however, this calculation will be based on the deduction of all Show Expenses but using only the amount of the \$350,000 of, and not the full, Marketing Budget) will be split as follows:

- a. The first \$60,000 of NTR will be payable to Producer;
- The next \$150,000 will be payable to WTI to cover the amount of full Marketing Budget;
 and
- c. Any remaining NTR will be split sixty (60) percent to Producer; forty (40%) percent to WTI.
- 4. If not already otherwise paid to or collected by WTI directly, WTI's share of "Net Merchandise Revenues" (both as defined in section VII below) shall also be paid to WTI with the balance paid to Producer at Preliminary Settlement.
- 4. All payments due to Producer hereunder are subject to applicable taxes including without limitation, MA withholding taxes (currently 5.20%) and MA corporate excise taxes.
- C. Preliminary Settlement: The parties shall conduct weekly preliminary settlements on the next business day after the final Sunday performance in each week of the Engagement ("Preliminary Settlement") at which time a written preliminary accounting of all Show Expenses (accompanied by settlement documentation) and information on ticket sales will be provided by each respective party (as applicable) with a level of detail satisfactory to the other. At each Preliminary Settlement, the parties shall be reimbursed or paid (as applicable) the amount of Show Expenses under in Sections V. A. and V. B above. For clarification, Producer shall receive Guarantee, Producer Royalty and Producer Fee as per paragraph V.B.1. Within thirty (30) days of the end of the Engagement, the parties shall conduct a final settlement for the Show ("Final Settlement") at which time a final accounting of all final Show Expenses (accompanied by settlement documentation) and any outstanding information on ticket sales will be provided. At Final Settlement, the parties will respectively by paid any sums shown to be due in the Final Accounting (including any amounts due under section V.B.3. above).

VI. SPONSORSHIP:

- A. WTI maintains the right to retain all revenues in connection with WTI and/or venue sponsors. Citi is a sponsor of the Premises ("Citi Sponsorship") and no other sponsorships will be permitted in the financial services, financial institutions, banking and/or credit/debit card categories. No sponsor revenue from the Citi Sponsorship will be included within Net Sponsorship Profits or payable to Producer hereunder. Producer will not sell any sponsorships for the Show presentation that conflict with the Citi Sponsorship or the existing sponsors at the Building, (e.g., Polar Springs). Subject to any WTI or Building sponsor exclusivities or requirements, either party may sell local Show sponsors (or subject to the agreement of the other party, may retain third parties to do so) and retain any net revenue derived therefrom for their respective sole account.
- B. All Event advertising and promotional materials must include the official sponsor of the Citi Performing Arts Wang Theater lock-up logo ("Official Sponsor Logo") to be graphically displayed and otherwise utilized in the manner selected by WTI in its sole discretion. No other Event sponsor logo shall be greater in size or have more prominent positioning than the Official Sponsor Logo.
- VII. MERCHANDISE. Producer's designated merchandiser ("Designated Merchandise") will provide WTI with a first-class program and other souvenirs ("Show Merchandise") to be sold by

Producer's vendors at the Premises during performances of the Show in such quantities and at such prices as mutually determined. Designated Merchandise shall pay to WTI an amount equal to twenty percent (20%) of "Net Merchandise Revenues" (defined below), ten percent (10%) for CDs/DVDs, in connection with Show merchandise following the last performance each week. Such payment will be accompanied by a full accounting of all items sold during the week. The term "Net Merchandise Revenues" as used herein shall mean the entire proceeds derived from the sale or distribution of Show Merchandise at the Building, less all Federal, state and local taxes thereon and applicable credit card charges (credit card charges capped at 4%). Designated Merchandise will be solely responsible for submitting MA Sales Tax collected on Show Merchandise sales and must furnish WTI with a copy of its MA ST-1 Sales and Use Tax Registration certificate.

VIII. SHOW SCHEDULE/SEATING REQUIRMENTS

- A. The ticket prices (exclusive of the Facility Charge) and scaling for the Engagement have been mutually determined and are set forth in Schedule A attached hereto and incorporated herein.
- B. Each party hereto shall be entitled to 675 complimentary tickets over the run of the Show Engagement; provided that an additional number of complimentary tickets may be available to a party (to meet its contractual obligations to sponsors and other third parties as applicable), subject to the prior reasonable approval of the other party. The following complimentary tickets will also be allotted over the entire Show Run: press- 490 (P1); and marketing and promotion-330 (P1), 1320 (P2), 1320 (P3) and 1980 (P4). Any complimentary tickets not used by Producer or WTI shall be returned to the Box Office reasonably in advance of the applicable Show performance for sale to the general public.
- C. WTI shall hold one hundred forty (140) house seats for WTI and/or its designee's use. Seventy (70) of such seats shall remain available for WTI's use until 72 hours before curtain time at which time they will be released for sale to the general public with Seventy (70) seats remaining available until 24 hours before curtain time.
- D. WTI shall have the further right to reserve seats for the Event for purchase by Citi ("Citi") customers at full price through customary ticket distribution channels commencing prior to, on or after the date that tickets for the Event are made available for sale to the general public (together, the "Sponsor Tickets"). The number and location of the Sponsor Tickets shall be determined pursuant to the existing sponsorship agreements between WTI and Citi (the "Sponsor Agreement"). In the event that the Sponsor Tickets are not purchased by Citi customers they will be made available to WTI's Box Office for sale to the general public pursuant to the schedule provided under the Sponsor Agreement. Citi is the exclusive credit/debit card/banking/financial services and planning/investment banking sponsor of the Premises/Building. Neither Producer, nor its agents, sponsors or designees shall reserve, allocate, offer or use any consignment or other tickets to the Show for the purpose of any VIP package, special or exclusive program, sponsorship or promotion or other arrangement that grants consumers access to such tickets with the use of any credit card that competes with Citi (other than as a normal purchase of an Event ticket from Ticketmaster or the Building's box office).
- IX. NON-COMPETE: Producer represents and warrants, that the Show will not be performed within a 75 mile radius of the Building (the "Territory") during the period commencing 90 days before the first day of the Engagement and ending 90 days after the last day of the Engagement. Notwithstanding the foregoing, WTI acknowledges and agrees that the presentation of the Show in

November 2014 in Norwell, MA.

- X. BILLING/CREDITS: The parties shall determine their respective credits/billing for the Show in the Program. Credits are to be included in the Program for both WTI executive and production staff and Producer's staff, as well as other Show material and information that will be provided by Producer.
- XI. EXPLOITATION: Producer shall not have any right to reproduce or record the Show, or authorize others to transmit, reproduce or exploit the Show either live or through any means of electronic media distribution, (including without limitation, broadcast, cable or other television transmission, videotape, DVD, sound recording, film, on-line, streaming or by any other means) whether now known or hereafter developed, at or from the Premises, absent WTI's prior written approval.

XII. REPRESENTATIONS AND WARRANTIES:

- A. WTI represents and warrants to Producer that:
- 1. It is a duly organized corporation, validly existing, and in good standing under the laws of the State of Massachusetts:
- 2. No provision of its partnership agreement, or any other agreement, instrument or understanding to which it is a party, or by which it is bound, has been or will be violated by its execution and performance of this Agreement;
- 3. This Agreement has been duly executed and delivered by it, and this Agreement is its legal, valid and binding obligation and is enforceable against it in accordance with its terms (except insofar as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, or similar laws affecting creditors' rights generally, and except as to the availability of equitable remedies); and
 - B. Producer represents and warrants to WTI that:
- 1. It is a duly organized corporation, validly existing and in good standing under the laws of the State of New Jersey;
- 2. No provision of its Articles of Incorporation, or By-Laws, or any agreement, instrument or understanding to which it is a party or by which it is bound, has been or will be violated by its execution and performance of this Agreement;
- 3. This Agreement has been duly executed and delivered by it, and this Agreement is its legal, valid and binding obligation and is enforceable against it in accordance with its terms (except insofar as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and except as to the availability of equitable remedies);
- 4. The intellectual property contained in the Show is or will be owned or controlled by Producer and use thereof in accordance with the terms and conditions of this Agreement will not violate the rights of any person or entity.
- 5. Producer has timely secured all rights necessary to produce, present, advertise and/or market the Show and that at no time during the Use Period will the Show or any of Producer's activities in connection therewith violate or infringe upon the rights of any third parties.

Such rights include (i) all necessary rights for WTI's use of the tradename/trademark, "Irving Berlin's White Christmas", associated Show logos and designs, and names, pictures, names, images and likenesses of the Show and all persons appearing in the Show in connection with advertising, marketing, promotion and presentation of the Show at the Premises have been obtained by Producer; and (ii) WTI's use thereof for this purpose will not violate or infringe upon any rights of any party.

XIII. INDEMNITY:

- A. Producer will indemnify, defend and hold harmless Wang Theatre, Inc., The Wang Center for the Performing Arts, Inc., New England Medical Center Hospitals Inc., NEMC Real Estate Company, Inc., MSG Holdings, L.P., The Madison Square Garden Company, MSG Boston Theatrical, LLC., and their owners, partners and respective parent and affiliated entities, whether direct or indirect, and all directors, officers, employees, agents, licensees, contractors, and successors and assigns of any of the foregoing (collectively, the "Affiliates"), from and against any and all claims, liabilities, losses, damages, judgments, settlement expenses, costs and expenses whatsoever (including court costs, attorneys' fees and related disbursements, whether incurred by WTI in actions involving third parties or in actions against Producer for claims under this Agreement) (individually, a "Loss" and collectively, the "Losses") arising out of or in connection with: (i) the breach by Producer of any of its agreements or covenants under this Agreement; (ii) the untruth of any of its representations and warranties hereunder; (iii) the conduct and presentation of the Show/Event including any preparation for or move-in or move-out of the Event, any hospitality function, reception, promotional event or similar event hosted by Producer or any talent appearing in the Event; and/or any sound recording, filming/videotaping, telecasting or other media exploitation of the Event (if so authorized by WTI); and (iv) the use of the Building or the Premises. or any part thereof, in connection with the Event including, but not limited to, areas utilized by guests attending the Event, box office areas, escalators, elevators, stairs, seating areas, lavatories, restaurant and concession areas and all areas and facilities utilized for ingress and egress of guests.
- B. Without limiting the provisions of subparagraph (c) above, Producer will defend, indemnify, and hold harmless WTI and the Affiliates for any damage to the property (whether in or about the Premises/Building) of WTI, the Affiliates or any third party during the Use Period whether caused by Event participants, production personnel, patrons or otherwise. All repairs to the damaged property of WTI will be made by firm(s) designated by WTI. The charges for such services will not exceed the charges generally prevailing for comparable services.

XIV. INSURANCE.

- A. Requirements. In connection with the Event, Producer will obtain and maintain the following insurance with insurance companies licensed to do business in the State of Massachusetts and with a minimum of an "A" rating in the current edition of Best's Insurance Guide:
- (1) Public Liability Insurance. Commercial General Liability Coverage (including coverage for personal and bodily injury, third party property liability coverage, blanket contractual liability, liquor liability, host liquor liability, products/completed operations and non-owned/hired automobile liability), which covers WTI, the Affiliates, Producer and each of their respective directors, officers, employees, agents, licensees, contractors and successors and assigns in a minimum combined single limit of liability of Five Million Dollars (\$5,000,000) for personal and bodily injuries to (or the death of), or property damage sustained by, one or more persons in any one occurrence arising out of, or in connection with, the Event and/or the use of the Premises or the

Building, or any part thereof during the Use Period; and

- (2) Other Insurance. Workers' Compensation Insurance, Employer's Liability Insurance and all other insurance coverage of similar character applicable, or relating to, the employment of Producer's officers, directors, employees, servants, agents and independent contractors, with limits as required by law.
- B. Pyrotechnics and Special Effects Insurance. With respect to the use of any and all laser and/or pyrotechnic devices or special effects approved by WTI hereunder, Producer will ensure that (i) Producer's insurance policy covering the Event will not contain an exclusion for pyrotechnics, explosives and/or confetti drops or other special effects; and (ii) the person(s) supervising and conducting any display of pyrotechnics, explosives or special effects will be licensed professional in compliance with Law with a Commercial General Liability insurance policy in minimum limits of Five Million Dollars (\$5,000,000) per occurrence specifically endorsed to include coverage for such activities naming WTI and its Affiliates as additional insureds and loss payees as their interests appear under such policy.

C. Certificates:

- WTI by Producer at least thirty (30) days in advance of the first day of the Use Period. The certificate evidencing the Commercial General Liability Coverage will expressly state that the policy includes blanket contractual liability coverage and name Wang Theatre, Inc., as the certificate holder. If such certificates are not delivered to WTI by the date required, in a form and from an insurer satisfactory to WTI, WTI will be entitled to treat such failure as a material breach of this Agreement. In such case, WTI, at the sole cost and expense of Producer, will have the right, but not the obligation, to purchase the Commercial General Liability Coverage and/or Property Damage Coverage required hereunder to protect the interests of the additional insureds set forth in clause XIV.C.(2) below. WTI's failure to purchase said insurance coverage, in whole or in part, will not give rise to any claim or defense by Producer against WTI, and will not relieve Producer of any of its obligations under this Agreement.
- (2) Certificates of insurance evidencing the insurance required under this Agreement (excepting Workers' Compensation Insurance) will contain the following endorsement:
- "Additional Insureds: Wang Theatre, Inc., The Wang Center for the Performing Arts, Inc., New England Medical Center Hospitals Inc., NEMC Real Estate Company, Inc., MSG Holdings, L.P., The Madison Square Garden Company, MSG Boston Theatrical, LLC., their owners, and partners and all of their respective parent and affiliated entities, whether direct or indirect, and all directors, officers, employees, agents, licensees, contractors and successors and assigns of any of the foregoing. Such coverage will be primary for all purposes, without any right of contribution and contain a waiver of subrogation in favor of WTI."
- (3) The policy will have no deductible or self-insured retention unless approved by WTI prior to the Event.
- (4) All certificates of insurance will provide that such policies may not be cancelled or modified in any manner upon less than thirty (30) days prior written notice to WTI. For an Accord or similar certificate, the words "endeavor to" and "but failure to mail such notices will not impose any obligation or liability of any kind on upon the company, its agents or

representatives" must be crossed out of the cancellation clause on each certificate of insurance. No certificate will be accepted with a disclaimer provision stating that coverage is not conferred on the Additional Insureds absent a special endorsement (unless such endorsement is provided with the certificate).

- (5) The limitations of liability required hereunder will be on a "per event" basis (rather than an annual aggregate).
- D. The indemnity set forth in Subparagraph XVI. A. above shall include injury or death of any employee, agent, contractor or subcontractor of Producer or WTI, or patron of the Building, and shall not be limited in any way by any amount or type of damages, compensation or benefits payable under any applicable Workers Compensation, Disability Benefits or other similar employee benefits acts and shall survive expiration of the Term of this Agreement.

XV. TERMINATION:

- A. This Agreement may be terminated by either party effective upon receipt of written notice if (a) the other party becomes bankrupt or files for protection under the bankruptcy laws or in similar circumstances including the filing of a voluntary or involuntary petition in bankruptcy by or against a party to this Agreement, whether for the purpose of reorganization or otherwise (unless such petition is discharged within 60 days of such filing), the admission of such party of its inability to pay its debts generally as they become due, such party's general assignment for the benefit of its creditors or the appointment of a receiver or trustee for such party or its property or such party otherwise takes the benefit of any insolvency act; or (b) the other party fails to perform any material term or condition of this Agreement and does not cure such failure within 10 days of written notice to cure by the non-breaching party.
- B. No termination of this Agreement shall be deemed to limit any other rights or remedies, at law and in equity, otherwise available to the parties.
- XVI. STANDARD TERMS AND CONDITIONS. Annexed hereto are WTI's Standard Terms and Conditions (the "Standard Terms and Conditions") which are incorporated herein by reference. In the event of any inconsistency between the terms and conditions contained herein and such Standard Terms and Conditions, the provisions contained herein shall prevail. Producer acknowledges that it has read and understands the Standard Terms and Conditions.
- XVII. APPLICABLE LAW; GOVERNING LAW/JURISDICTION: This Agreement shall be construed in accordance with and governed by the laws of the State of Massacusetts without regard to its conflicts of laws decisions. Any litigation, action or proceeding arising out of or relating to this Agreement shall be instituted in any state or federal court located within the City of Boston and the parties hereby submit to the sole and exclusive jurisdiction of any such court in any such litigation, action or proceeding.
- XVIII. CONFIDENTIALITY; NON-DISCLOSURE: Each of WTI and Producer represents and warrants to the other that, except as specifically authorized by one party to the other in writing, information and other data developed or acquired by or furnished in the performance of this Agreement shall be used only in connection with services provided to said party. Each party agrees that all materials and any and all matters concerning the other learned during the course of its services hereunder, as well as the terms and conditions of this Agreement, are trade secrets or are otherwise proprietary or confidential and are not to be disclosed, disseminated or otherwise revealed, in whole or in part, in any manner whatsoever, either during or after the Term of this

Agreement, to anyone other than its attorneys, accountants or employees on a need-to-know basis, providing such persons treat such matters as confidential in accordance with this section or if compelled by valid legal process with notice to the other party and an opportunity to obtain a protective order if available.

IXX. RELATIONSHIP OF PARTIES: Each party to this Agreement is an independent contractor and not an agent, partner or joint venturer of the other. Neither party has the apparent or implied authority to do any of the following:

- A. Pledge the credit of the other or any of its employees;
- B. Bind the other under any contract, agreement, note, mortgage or other obligation;
- C. Release or discharge any debt due the other; or
- D. Sell, mortgage, transfer or otherwise dispose of any assets of the other.

XX. NOTICES: All notices required or permitted by this Agreement to be given to a party shall be in writing and shall be delivered personally or sent by certified or registered mail, return receipt requested, or by overnight courier or telecopied to the party concerned at its address as set forth below or telecopier numbers provided during the Term. Mailed notice shall be deemed to have been given 3 business days after being deposited in the United States mail. Notices sent by overnight courier shall be deemed received one day after being delivered to the overnight courier services for next day delivery. Notices sent by telecopier shall be deemed received in accordance with a confirmation so indicating.

All notices to Producer shall be addressed to:

Blue Skies Tour LLC 42 Maple Street, 2nd Fl Summit, NJ 07901 Attn: Nancy Gabriel

All notices to WTI shall be addressed to:

WTI c/o 270 Tremont Street Boston, MA 02116 Attention: Michael Szczepkowski Vice President & General Manager

With a copy to:

MSG Holdings, L.P.
2 Penn Plaza - 16th Floor
New York, NY 10121
Attention: Josephine Vaccarello
Vice President
and
Legal and Business Affairs
MSG Holdings, L.P.

2 Penn Plaza - 19th Floor New York, NY 10121 Attn: Denise Rubin-Carter Vice President, Business Legal Affairs

XXI. NO ASSIGNMENT OF AGREEMENT AND SALE OF THE BUILDING Neither party to this Agreement may assign its rights or obligations hereunder without the prior written consent of the other party except that WTI may assign its rights and obligations to any entity that is controlled by or under common control with it, or to any entity acquiring all or substantially all of its stock or assets.

XXII. FORCE MAJEURE: In the event that fire, flood, earthquake, strike, labor dispute, riot, civil commotion or emergency, war, terrorist act (or related security or safety concerns), extreme failure of electrical utilities or transportation or any other event beyond WTI's reasonable control ("Force Majeure Event") interferes with the load-in/load-out, rehearsals for and/or the Show Run at the Premises, WTI shall not have any liability to the Producer for damages; provided however, that the parties will make best efforts to resolve whatever problems were caused by the Force Majeure Event in accordance with their respective obligations hereunder. Notwithstanding any Force Majeure Event, WTI shall be reimbursed for the Show Expenses incurred by (or owed to) WTI and each party shall be paid its respective monies, share of Net Ticket Revenue, Net Sponsorship Profits and Net Merchandise Revenues earned by it under section V.B hereunder up until the time of the Force Majeure Event, and thereafter in connection with the resumption of the Show Run (if interrupted due to the Force Majeure Event).

XXIV. PARAGRAPH TITLES: The head notes and capitalization contained in this Agreement are for convenience only and are not intended in any way to define or limit the construction or interpretation of any section of this Agreement.

XXV. COOPERATION AND APPROVALS: Each party agrees to use best efforts to cooperate and consult with the other party in an effort to speedily and amicably resolve any unforeseen difficulties or problems not covered by this Agreement.

XXVI. NO WAIVER: The failure of WTI or Producer to insist on the other party's strict compliance with the terms and conditions in this Agreement shall not constitute a waiver of WTI's and Producer's right to insist that the other party in the future strictly comply with any and all of the terms and conditions contained in this Agreement.

XXVII. REMEDIES CUMULATIVE: All remedies, rights, undertakings, obligations and agreements contained in this Agreement shall be cumulative, and none of them shall be in limitation of any other remedy, right, undertaking, obligation or agreement of any party.

XXVIII. SEVERABILITY: If any clause or provision of this Agreement shall be held to be invalid or unenforceable, such clause or provision shall be construed and enforced as if it has been more narrowly drawn so as not to be invalid or unenforceable and such invalidity or unenforceability shall not affect or render invalid or unenforceable any other clause or provision of this Agreement.

XIX. ENTIRE AGREEMENT: This document contains the entire agreement and understanding between the parties relating to the contents hereof and supersedes all prior agreements between the parties. This Agreement may not be altered, amended, modified, or otherwise changed, nor may

any of the terms hereof be waived, except by an instrument in writing signed by both parties. Facsimile signatures herein shall be deemed originals for all purposes. This document may be signed in one or more counterparts, each of which shall be deemed an original, and all of which together shall be deemed to be one and the same document.

We look forward to working with you on this exciting project, and anticipate a mutually successful relationship.

CITI PERFORMING ARTS CENTER THE WANG THEATRE

Mike Szcepkowski Vice President

AGREED AND ACCEPTED:

BLUE SKIES TOUR, LLC

Authorized Signatory

STANDARD TERMS AND CONDITIONS - CONCERTS/SHOWS

I. COMPLIANCE WITH LEGAL REQUIREMENTS.

- A. Producer (including, without limitation Producer's employees, contractors and all other persons under its authority) will comply with all applicable laws, orders, ordinances and regulations and with any lawful direction of public officers relating to the Show, the Engagement, the Building and its use and occupancy hereunder.
- B. Producer will be solely responsible for the discharge of all of Producer's obligations under all applicable law, with respect to Producer's employees and contractors, including, without limitation, in connection with tax withholdings (domestic and foreign, if applicable) workers compensation and disability insurance.
- C. Producer will comply with WTI's obligations to its sponsors in connection with activities in the Building and Producer will not do anything contrary to or inconsistent with such obligations. Absent WTI's prior written approval, no signage or other element of an Artist/Producer sponsor may be displayed at the Building.
- D. In the event any minor is scheduled to appear, Producer will comply with the applicable provisions of law, including, but not limited to, the Education Law of the State of Massachusetts and any other applicable rules or regulations. Producer shall supply WTI with copies of valid Massachusetts working papers for such minors prior to the Show. Otherwise, minors are not permitted in the non-public areas of the Wang Theatre without the prior written permission of WTI and appropriate supervision.
- E. In accordance with law, smoking is prohibited throughout the entire Building. Anyone violating this rule will be subject to removal from the Building by WTI's security.

II. COMPLIANCE WITH WTI SECURITY AND OTHER RULES.

- A. As between the parties, any and all security requirements or problems will be brought to the attention of, and will be subject to the ultimate authority and control of WTI's security personnel. It is hereby understood and agreed that WTI, in its sole discretion, shall be entitled to utilize special security equipment anywhere in the Building, including, but not limited to, any entrances to be utilized by the public or Producer or its employees, agents or backstage guests. In any such case, all costs and expenses incurred in connection therewith shall be Show Expenses.
- B. Producer, its agents, employees, patrons and guests will abide by WTI's rules and regulations for the use, occupancy and operation of the Building. Anyone employed by Producer will be under the general supervision of WTI (but not as an agent or employee of WTI). Producer agrees that any security personnel provided by Producer will not interact with patrons of WTI. Only WTI may remove any person it deems to be undesirable or disorderly from the Building. WTI security has the sole right, in its discretion, to take any steps to prevent injury to persons or damage to property in and around the Building. Producer agrees to notify WTI's Director of Security in advance of the Show if any performers intend to enter the audience area

during performances.

- C. No weapons of any kind or nature will be permitted to be brought into the Building and WTI shall have the right, in its sole discretion, to request an advance weapon check for any person entering the Building. Any person found carrying a weapon will not be permitted to enter the Building.
- D. In no event shall Producer, or any designee, employee or independent contractor of Producer, take any action or fail to take any action in connection with the Show that would or might interfere with or deleteriously affect any existing union jurisdictional arrangement relating to the Premises, the Building or otherwise interfere with or deleteriously affect the regular business operations of WTI.
- E. Producer acknowledges and agrees that all of Producer's, Artist's and their respective employees, contractors' and/or agents' personal property, including, without limitation, Artist's instruments and equipment brought or permitted by Producer into the Building will be at Producer's sole risk. WTI will not be liable to any party for any loss of or damage to such property.
- F. The parties will coordinate the number of backstage passes and limit access to the entrance designated by WTI. WTI's security will remove any person from the backstage areas in the interest of order, quiet or safety. Producer's guests will have tickets and be seated in the auditorium or in another area designated by WTI (e.g., a green room). Only persons directly involved with the production or who have been cleared by WTI will be permitted backstage.
- G. Producer acknowledges that on-site emergency medical technicians and stand-by ambulance services may be furnished at the Show by such party as may be contractually authorized by WTI to satisfy its requirements with respect to such services. Any other vendors desired by Producer for such services must be approved in writing by WTI.
- III. PRODUCER'S RESPONSIBILITIES IN CONNECTION WITH THE SHOW. In accordance with applicable rules and regulations, Producer must comply with the following:
- A. Producer understands and agrees that the sound level limit for the Theater is 105 dba, measured on the A-weighted scale at the Theater's rear wall, approximately 110 feet from the stage. Sound levels, excluding applause, will be strictly monitored by the Theater's manager and soundman. If, at any time during a performance, the average sound level during a five-minute period exceeds 105 dba, WTI shall discuss with Producer and a mutually acceptable resolution will be determined.
 - B. All equipment must be either upstage or downstage of the fire curtain line.
- C. Producer and WTI shall comply with the requirements of all laws, orders, regulations, directives and prescriptions of Federal, state, county and municipal authorities which shall impose any duty upon WTI or Producer with respect to the Premises, and Producer shall cause all artists, performers and other participants in the Show to cooperate with WTI and Producer with respect to such matters (including, without limitation, any requirement under the Americans with Disabilities Act to provide certain auxiliary aids or services or access to tickets for purchase by persons with disabilities in connection with the Show). Producer shall comply with all rules, orders, regulations or requirements of the Board of Fire Underwriters or any comparable body and shall not do or permit anything to be done in or about the Premises or the Building or bring or keep anything

therein which shall increase the rate of fire insurance on the Building or on property located therein. No gasoline, acetylene or other fuel or combustible will be admitted to the Building without the approval of WTI and the Bureau of Combustibles of the Fire Department; provided however, that under no circumstances whatsoever shall propane be admitted to the Building. Any decorating or other work, and the material therefor, done or furnished by Producer shall be subject to approval by WTI and the Fire Department and, unless so approved may be prevented or removed by WTI. All scenic elements, decorations and other combustible materials must be fire-proofed, and Producer shall deliver to WTI a flame-proofing certificate in the form specified or required by and satisfactory to the Fire Department or any other agency of the City of Boston having jurisdiction with respect thereto or else such elements will not be permitted into the Building. Producer must deliver to WTI, no later than two weeks prior to the load-in: (a) a description of any stage drapery being used for the Show, its placement and use; (b) a twelve inch square sample of each drapery used; and (c) a description of all special effects or open flames including material, description of use, any applicable MSDS sheets, duration and timing within show. Fabric samples must be able to self-extinguish immediately or not ignite during a three minute torch test. In the event that fire watch or permit re-testing fees are required due to failure of Producer's materials to pass the Fire Department test, or due to Producer's failure to provide samples for testing in a timely fashion, all such fees shall be a Producer Cost. No cut evergreens shall be permitted in the Premises or the Building.

- D. Producer hereby agrees that with respect to the use of any and all laser and pyrotechnic devices to be operated in connection with the presentation of the Show, if any, Producer shall comply with all laws, rules, regulations, prescriptions, criteria and policies of all Federal, state and local authorities or agencies applicable thereto, including, without limitation, the then current: (i) rules of the Massachusetts State Department of Labor and the Food and Drug Administration Compliance Policy Guide (or any successors thereto); and (ii) rules, regulations and directives of the Fire Department of the City of Boston. Producer shall deliver all supporting documentation confirming Producer's compliance with the above requirements at least seven (7) days prior to the first performance of the Show. Notwithstanding all of the foregoing, Producer shall not use any laser and/or pyrotechnic devices whatsoever without the prior written consent of WTI, which may be withheld within its sole discretion.
- E. There shall not be any solicitation of funds at the Building. In the event any portion of ticket proceeds are to be donated to a charity, Producer shall have the obligation for compliance with all applicable charitable co-venturer requirements and law, including, without limitation, any filing requirements.
- IV. FRAUDULENT CHARGES. Producer acknowledges that a portion of the proceeds from the sale of tickets may be held back in order to cover the costs related to chargebacks for fraudulent credit card sales or damages arising from any credit card sales that occur following the Preliminary Settlement to be reconciled at the Final Settlement. Producer and WTI agree that they each shall be liable for and each of them indemnifies and holds harmless Ticketmaster, the other party and their respective affiliates from and against fifty percent (50%) of any lost revenues, chargebacks or damages arising from any credit card sales that occur following the settlement of the Show.
- V. REPRESENTATIVES/COORDINATION OF PRODUCTION. Producer confirms that it has designated to WTI in writing Producer's representative with authority to act for Producer in coordinating preparation for the Show with representatives of WTI. Producer represent that such designee will have the full authority to make any production or business decisions in regard to the Show on Producer's behalf. WTI will not be liable if Producer does not have Producer's designee

available and such unavailability results in a delay or stoppage of work on the Show due to Producer's inability to make business or production decisions or authorize the expenditure of monies.

VI. WTI'S TRADEMARKS AND DESIGNS. The words "Wang Theatre", "Citi Performing Arts Center" and "Wang Theatre Presents" are registered service marks belonging to WTI and/or its affiliates or sponsors (the "Service Marks"). Similarly, WTI's logos, designs and other artwork and images of the Building (collectively, "Designs") are federally protected. No use of the Service Marks or Designs shall appear in any artwork, copy, advertising, or promotional or other materials in any media without WTI's prior written approval in each case for each use. Each such use of any of the Service Marks or Designs shall be followed by the designation directed by WTI. Producer's right to use the Service Marks and/or Designs after such approval shall be non-assignable, non-transferable and limited by this Agreement.

VII. ADVERTISING/PROMOTIONS/PUBLICITY.

- A. WTI will arrange for all advertising, promotion and publicity for the Show, after consultation with Producer, the costs for which are Show Expenses. Producer has provided or will provide WTI with approved copy, names, logos, likenesses, biographies and other materials which WTI shall have the right to use in all advertising, promotion and publicity for the Engagement and WTI.
- B. Producer agrees that the Show shall be part of a venue sponsored concert series at the Building (the "Show Series"). The Show may also be a "Citi Card Event". Accordingly, all advertising and promotional materials for the Show, Show tickets, WTI's program, press releases and pre-Show, intermission and post-Show announcements in the Building may mention the Show Series. In addition, all advertising and promotion for the Show by the parties in any format/media will include the Building name and/or logo and WTI website address (at least equal in size and prominence to Producer's website, if contained in such advertising).
- C. Producer hereby authorizes the Show to be included in WTI's complimentary program, club suite brochures and other promotional material, if WTI determines in its sole discretion to distribute same.

VIII. TICKETS AND SEATING.

- A. All production kills shall be mutually agreed upon by the parties and shall not be utilized for purposes of complimentary seating. Any party using a production kill seating location for compliment seating shall pay for each such seat at the full price of the paid seat located nearest to such production kill seating. WTI shall hold for itself or persons designated by WTI, at regular prices, 140 house seats in locations determined by WTI. 70 of such seats shall remain available until 72 hours before curtain time and 70 seats shall remain available until 24 hours before curtain time. Producer acknowledges and agrees that there are 157 "Dress Circle" seats at the Building which are off-manifest and will not be included Gross Box Office Receipts.
- B. Ticket Scaling. Ticket scaling and the ticket prices for the Show will be mutually approved and are set subject to the requirements of the Americans with Disabilities Act.
- C. Ticket Purchases. Producer shall have the right to reserve and purchase up to forty (40) seats per performance, 36 on a 48 hour hold, and 4 emergency holds. for the Event for

its own use or the use of its designees (exclusive of the complimentary seating reserved for the use of WTI or its designee(s) as described in Section VIII of the Agreement). In the event that WTI does not use any or all of such seating prior to the Event, it shall be made available to WTI's box office for sale to the general public.

- D. Ticket Refunds. WTI shall have the right to deduct any ticket refunds from any monies due Producer hereunder. (c) Licensee acknowledges that WTI may hold back from box office or any other receipts due Licensee hereunder at settlement or otherwise a reasonable amount, determined by mutual agreement of both parties to process and issue patron refunds (as circumstances warrant) consistent with WTI's customary practices and procedures from time to time. Licensee further acknowledges that WTI may issue such refunds in the event of equipment failure rendering a performance of the Show impossible, performer not performing equivalent to billing, inclement weather or for any other cause reasonably deemed appropriate by WTI.
- E. CITI Tickets. WTI reserves the right, at its sole discretion, to offer the following pre-sale opportunities at full ticket prices prior to the first public sale of tickets to any performances of the Show: 72-hour pre-sale opportunity for members of The Club followed by a 48-hour pre-sale opportunity for Citi Card holders.
- IX. ADA REQUIREMENTS. In compliance with the Americans with Disabilities Act, certain seating identified in the manifest may not be available for sale to the general public.

X. HOUSE OPERATIONS AND MERCHANDISE.

- A. WTI reserves the right to operate all bars and concessions solely for its own account.
- B. All merchandise must be consistent with WTI's customary quality standards and shall be subject to WTI's approval.

XI. NO REPRODUCTION OF THE CONCERT: EXCEPTIONS FOR PRE-APPROVED NEWS/PUBLICITY PURPOSES AND CERTAIN PHOTOGRAPHS.

- A. Producer will not, or make arrangements or contract for, or permit others to engage in any recording, broadcasting, televising, filming, taping, downloading, streaming, webcasting, phone casting, transmitting by any other form of electronic media, or any other kind of recording, reproduction or exploitation of whatsoever nature, whether now know or hereafter developed, in connection with either the Show or the Building, in the absence of a separate written agreement signed by all parties hereto and payment to WTI of its customary origination fee and all related costs and expenses.
- B. Notwithstanding Paragraph XII (A), Producer will be permitted to admit approved press photographers and news crews for news and publicity purposes only, provided that Producer advises WTI at least forty- eight (48) hours prior to the Show of the identity of such photographers and/or news crews and receives WTFs approval therefor.

XII. REPRODUCTION OF CONCERT BY WTI.

A. Producer agrees to allow WTI in coordination with Producer to photograph the Show and to use such photographs for WTI archival and promotional purposes, subject to

Producer's prior reasonable approval.

- B. Producer agrees that WTI in coordination with Producer will have the right to admit its customary number of approved press photographers and/or news crews for news and publicity purposes only.
- XIII. RESERVED RIGHTS IN BUILDING. WTI and its designees at all times has free access to all parts of the Building. WTI reserves and retains the absolute right to erect display advertising in the Building, and to make any announcements in connection with the safety, security, and/or welfare of Show patrons and to make such other announcements in coordination with Producer as it desires, in any manner which does not interfere with the Show.

XIV. CONDITION OF BUILDING: MAINTENANCE OF BUILDING.

- A. WTI makes no representations with respect to the Building. Producer has examined the Building and has concluded that it is in good repair, suitable for Producer's purposes on an "as is/where is" condition.
- B. Producer acknowledges that other parts of the Building may be used during the Term for activities other than the Show. WTI operates a tour which may enter the Auditorium during the Term. WTI will have full authority to establish the schedules for the use and availability of all Building services and facilities in its reasonable, business judgment,, and Producer agrees to comply with any schedules and sharing arrangements so established. Producer will be given advance notice of any sharing arrangements. Building entrances and exits will be locked and opened as WTI will determine after consultation with Producer. Producer, by Producer's designee, will be present at all times during the Show.
- C. Producer shall not mark, paint, drill into or in any way mar or deface any part of the Premises or the Building except lagging, if necessary. Producer shall not install, display or erect any lettering, signs, pictures, notices or advertisements upon any part of the outside or inside of the Building or make any alterations or improvements in or to the Premises or the Building without the prior written consent of WTI. Nothing contained herein shall be deemed to limit or restrict WTI's right to sell and display permanent or non-event related advertising or sponsorship signage or elements (including, without limitation, vehicle displays in the Building) in any portion of the Building or event-related signage for events other than the Show.

XV. DEFAULT.

A. If before or during the Show (i) Producer defaults in the performance or observance of any of Producer's material obligations or agreements contained herein, including cancellation of the Show by Producer for any reason (including, but not limited to Producer's inability to obtain immigration clearance or other immigration problems), not caused by Force Majeure (ii) Producer makes an assignment for the benefit of creditors or takes the benefit of any insolvency act, (iii) a case or proceeding is commenced, or petition filed, by or against Producer under an insolvency act or (iv) Producer vacates or deserts the Building, then, and in any such event, this Agreement, in its entirety will expire fully and completely, effective upon notice to Producer. All of Producer's rights hereunder will cease, Producer will quit and surrender the Building to WTI, and Producer will reimburse WTI for the actual amounts paid by WTI or contracted to be paid by WTI as of the date of the default and required to be paid thereafter in connection with the Show, paid and lost profits. Notwithstanding the foregoing, WTI shall retain all its rights and remedies

under law or equity or otherwise.

B. In the event of Producer's breach or threatened breach of any of Producer's material obligations hereunder, WTI will have the right of injunction and the right to invoke any remedy allowed at law or in equity or otherwise.

XVI. END OF TERM. At the end of the Term, Producer immediately will remove all Producers property from the Building and surrender the Building to WTI. The Building will be in clean condition and good order, ordinary wear excepted. Producer agrees to pay any costs resulting from Producer's failure to do so, or from damages to real or personal property belonging to or supplied by WTI, due to Producer's acts or failures to act or due to the acts of Producer's employees and/or independent contractors.

XVII. MISCELLANEOUS.

- A. Consent. No consent, approval or waiver will be deemed granted unless in writing. Consent, approval or waiver may be granted or withheld in the discretion of the party whose consent, approval or waiver is requested.
- B. Invalidity. A determination that any provision of this Agreement, as applied to either party or to any circumstance, is either void or unenforceable will in no way effect any other provision of this Agreement or the validity or enforceability of all other provisions of this Agreement.
- C. Inconsistency. In the event of any inconsistency between the long-form agreement and these STC, the provisions of the long-form agreement will prevail.



Annie on Tour, LLC c/o The Road Company 165 West 46th Street, Suite 1101 New York, NY 10036 Attn: Stephen Lindsay

Re: "Annie" at the Wang Theater November 5-16, 2014

Dear Stephen:

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This letter shall constitute the agreement (the "Agreement") between Wang Theatre Inc. ("WTI"), and Annie on Tour, LLC ("Producer") in connection with the production and presentation of the live theatrical show entitled, "Annie" (the "Show") at the Citi Performing Arts Center/Wang Theater (the "Building") in Boston, MA on November 5, 2014 through November 16, 2014, on the terms and conditions set forth herein.

L LICENSE OF BUILDING FOR SHOW PRESENTATION:

- A. Subject to the terms hereof, WTI hereby grants Producer the license and privilege (the "License") to use the area designated as the theater (the "Premises") within the Building for load-in, technical rehearsals and preparations, rehearsals, presentation and load-out of the Show (collectively, the "Event"), during the period commencing at 8:00 A.M. on November 4, 2014 and ending at approximately 4:30 A.M. on Monday, November 17, 2014 (the "Period"), in accordance with the schedule set forth in subsection II. B. below,
- B. Producer will provide and pay for a fully produced Show with all rights required to present, promote, advertise and market the Show, including but not limited to: all talent and other cast; music, orchestrations, charts and all other intellectual property; all rights, licenses and clearances; parking permits or arrangements for Show touring trucks (except during Load In/Load Ou); supplemental sound, lights and audio-visual equipment; and any other elements, equipment or other materials (which are not included in the licensed Premises) and all associated payments and fees. Producer will perform necessary set modifications to conform the scale of the Show to the size of the stage/proscenium of the Premises if and as required, Producer shall have final determination of changes to artistic elements of the Engagement.

II. TERM; USE PERIOD:

- A. <u>Term</u>: The term of this Agreement will commence as of the date hereof and continue through "Final Settlement" (as defined in section V.C. below) for the Show engagement at the Premises ("Term").
- B. <u>Use of Building</u>. The Premises will be available (excluding the Dark Days as defined below) for the use of the Show ("Use Period"), based on the following schedule:
 - * Load-in/Rehearsals Tuesday, November 4, 2014 at 8:00 a.m. through Wednesday, November 5, 2014 up to the time of the first performance.

- * Show Performances Wednesday, November 5, 2014, through Sunday, November 16, 2014 ("Show Run" or "Engagement").
- Load-Out following the last performance of the Show.
- Sixteen (16) performances of the Show are currently contemplated as set torth in the show schedule attached hereto as Schedule A and incorporated herein; however, if circumstances so warrant, MSG and Producer may mutually determine to either reduce the number of Show performances (in which case the Guarantee will be reduced on a pro-rata basis as set forth in subsection V.B. 1. below) or alter the Show performances schedule.
- C. WTI retains the exclusive right to license the Premises to third parties during the Use Period: (i) on the dark days of Monday, November 10 and Wednesday, November 12, 2014 and (ii) before 5:00 P.M on any other days during the Period when only a 7:00 P.M. Show performance is scheduled (collectively, "Dark Days"). Producer will be notified as to any such uses by third parties on Dark Days. If applicable WTI will be responsible for any expenses incurred in the removal and set up of Producer's staging and sets for the purposes of any such third party use including the cost of a member of Producer's personnel to be at the Theatre during any such events. Such third party use may include the presentation of an event on the stage of the Premises without removing Producer's staging and sets (i.e., in front of such staging and sets).
- D. Producer will notify WTI of Producer's estimated arrival time at the Building. Unless otherwise specifically agreed in writing by WTI, all load-in work will be conducted between the hours of 8:00 a.m. to 11:59 p.m. on the load-in days specified in subsection II.B above. Any penalties or additional expenses incurred as a result of work outside of these hours will be deemed a Company Charge as defined below.
- III. PRODUCER WILL PROVIDE: Producer will provide (or cause to be provided) the following in connection with the Show at the Building, at Producer's sole cost and expense (except as otherwise noted below):
- A. A fully produced, Show including: the Show concept, staging, choreography, scenic design, costume design, script and existing Show physical elements (i.e., scenery/sets, props and costumes).
- B. the right and license to use of the tradenames and trademarks "Annie" and associated logos and designs, Show imagery and cast member names and images (collectively, "Annie Marks") in connection with the advertising, marketing, promotion and presentation of the Show at the Premises as to which Producer represents and warrants that it has the right to provide to WTI hereunder.
- C. Funding of the Show mount, production and operating costs (except as otherwise set forth herein),
- D. The engagement of the cast for the Show in compliance with all applicable rules and requirements. From time-to-time during the Term, Producer will provide members of the Show cast or additional hired promotional cast for promotional appearances, the cost for which shall be part of the Show marketing budget ("Marketing Budget") to be funded by WTI (unless such costs are covered by a third party) subject to coordination with Producer's Press Representative.



- Except as set forth in section IV.G below, the engagement of all musicians (collectively. "Musicians") for the Show (in compliance with all applicable local union requirements as required). WTI shall not be required to enter into any collective bargaining or other agreement in connection with the Musicians or otherwise in connection with the Show. Producer will furnish (at its sole cost and expense and not a Show Expense) viable charts for the parts to be played by the Musicians. For clarification, there are thirteen (13) Musicians who perform the Show music. Producer will travel with five (5) Musicians, all of whom shall be paid directly by Producer. The remaining eight (8) Musicians will be hired locally as a documented show expense (in compliance with all applicable local union requirements). WTI shall not be required to enter into any collective bargaining or other agreement in connection with Show Musicians or otherwise in connection with the Show. Producer will furnish (at its sole cost and expense and not a Show Expense) viable charts for the parts to be played by Musicians engaged hereunder.
- F. Applicable music performance rights fees for Show music (which may be paid to the applicable performing rights society directly by Producer) and any other music rights fees required for the Show music and any associated advertising and marketing.
- G. Provision of templates for marketing materials for WTI's use (under section IV(D) below), for advertisements (including print, television, radio, electronic/computer media, outdoor displays, billboards and direct mail), brochures, artwork and promotion and publicity materials in connection with the Show, as well as consultation and assistance with respect to marketing plans, group sales, advertising, public relations and publicity, all of which shall be administered and implemented by WTI All such materials implemented and/or placed by WTI as of the date of execution hereof are hereby deemed approved by Producer. Thereafter, Producer will have the right to pre-approve (not to be unreasonably withheld, delayed or conditioned), the style/form of any Annie Marks contained in any templates; provided, however, that once the style/form of the Annie Marks has been approved by Producer, WTI will not be required to seek fixture approvals for further uses provided WTI does not alter previously approved style/form.
- H. Insurance for all "Losses" (as defined in section XIII. A. below) arising in connection with the Event and use of the Building for the Event, and the full indemnity, hold harmless and defense of WII in connection with any such Losses as set forth in subsection XIII. A. below.



IV. WTI WILL PROVIDE: WTI will provide (or cause to be provided) the following items in connection with the Show at the Premises, the costs for which will be deemed "Show Expenses" (as defined below):

- A. Use of the Premises for which WTI will receive payment of the "Fixed Building Expenses," as such term is herein defined (in section V. A. 4. below).
- B. "Front-of-House Labor" (i.e., ushers, tickets takers and other front-of-house personnel; cleaning/maintenance crew; security personnel; venue management; in-house public relations/marketing personnel; and box office personnel) for the operation of the Premises during the Use Period, in a number sufficient, in WTI's sole, reasonable, business discretion, to satisfy the normal requirements for events of this nature, payment for which is included in the amount of Fixed Building Expenses.
- C. "Local Back of House Labor" (i.e., the production labor including stagehands, Teamsters, wardrobe and hair labor to be provided by WTI during the Use Period, in a number as set forth in Schedule B sufficient, in WTI's reasonable, business discretion in consultation with Producer and as mandated under any applicable collective bargaining agreements to satisfy the normal requirements for events of this nature) for which WTI will receive from available NAGBOR "Local Back-of-House Labor Expenses" (as defined in section V. A. 4 below). The Local Back of House Labor will be provided during load-in, load-out, performances, continuity calls prior to a performance (not to be held more than 1.5 hours before advertised curtain time) and one rehearsal/sound check immediately prior to the first public performance only. (Stagehands and/or teamsters as applicable will also be provided for strip and restore, mopping, truck loading/unloading (during load-in and load-out), spotting calls), subject to the following:
 - 1. Any required stagehands and teamsters for rehearsals (after the first public performance) or for work calls unless such work calls are necessitated as a result of delays caused by damages or disrepair of the Building (including any overtime charges in connection with the foregoing) will be a Company Charge (not Local Documented Expenses);
 - 2. Any wardrobe and hair labor provided for so called "Daywork", rehearsals after the first public performance and/or work calls will be a Company Charge (including any associated overtime charges) and not Local Documented Expenses. "Daywork" includes any wardrobe and hair labor provided for any calls following the conclusion of a performance, any laundry or maintenance calls during the load-in, prior to, during and/or after a Show performance, and/or during load-out, as well as any rehearsal calls following the first performance.
 - 3. Any actual cost or expense associated with Americans with Disabilities Act requirements for the Engagement (i.e., signed performances for the hearing impaired, audio described performances, or captioning) will be a Local Documented Expense; provided that, WTI will have no obligation to make any permanent or semi-permanent renovations or modifications to the Building (e.g., ramps, elevators, etc.). Additionally, if an ADA interpreter or other ADA-related labor is required by law but not available locally, associated travel expenses for such labor shall be deemed a Local Documented Expense. Producer will cooperate with WTI and Building with



respect to any disability-related services provided during a performance. If ADA compliance is not required by law for the Engagement, any expenses incurred by WTI for any such services requested by Producer will be a Company Charge.

- D. Advertising and marketing including implementation of the Marketing Budget (inclusive of marketing plans, media placement, "Group Sales", "Subscription Series" (as such terms are defined below), advertising, public relations and publicity for the Show). WTI will enter into agreements for Show marketing and media buys and produce the necessary marketing materials using the templates to be provided by Producer. WTI shall receive a "Group Sales Commission" in connection with the sale of tickets to the Show to groups of ten (10) or more ("Group Sales") and a "Subscription/Member Commission" in connection with the sale of tickets to Citi Performing Arts Center members/series subscribers ("Subscription Series") at the Building (as such terms are defined in section V.A. below).
- E. Advance ticket sales services through the Building box office (the "Box Office") including the set-up/operation of the box office and all related box office services and personnel for the sale of tickets to the Show from the on sale date through the last performance of the Show during the Term when the Box Office is open.
- F. Available technical facilities and production equipment in the Premises, including house PA sound and theater lighting, house soft goods, Internet/telephone lines and local telephone service. Any charges for requirements or items arising as result of Producer's work calls and rehearsals after the first public performance of the Show, including but not limited to, additional equipment rental, (e.g., shop usage and shop equipment, compressed gas, paint, tape, stage flooring, hemp, talent requirements) and runners, will be a Company Charge unless the parties mutually agree in writing prior to the commencement of the Engagement that any associated charges be considered Local Documented Expenses. In the case of goods or services rented or purchased from a third party, WTI will charge the Producer the actual cost. Consistent with Building specifications and requirements, WTI will use commercially reasonable efforts to accommodate the requirements set forth in Producer's Technical Rider in order for smooth and efficient presentation of the Show at the Building.
- G. Engage eight (8) Musicians (including a contractor) to augment the Musicians traveling with the Show with associated charges ("Musicians Costs") being considered as Local Documented Expenses. For clarification, thirteen (13) musicians will play during the Show. Producer will travel with five (5) musicians, all of whom shall be paid directly by Producer. The remaining eight (8) musicians will be hired locally as a Local Ddocumented Expense...

V. FINANCIAL TERMS/PAYMENTS/SETTLEMENT:

A. <u>Definitions:</u>

- 1. "Gross Box Office Revenue" ("GBOR") shall mean all revenue inclusive of all applicable taxes and Facility Charges derived from the sale of tickets to the Show at the Premises from any source whatsoever less any returns or refunds.
- 2. "Net Adjusted Gross Box Office Revenue" ("NAGBOR") shall mean the sum of Gross Box Office Revenue less "Ticket Deductions



- 3. "Ticket Deductions" shall mean the total of the items listed below to be deducted from the Gross Box Office Revenue to arrive at Net Ticket Revenue. All Ticket Deductions will be retained by WTI (except as set forth in subsection 3(f) below) for its sole account (as between the parties hereto) at each weekly Preliminary Settlement.
 - a. Any applicable taxes on ticket revenue.
 - b. The "Facility Charge" herein defined as the per paid ticket amount of \$3.75 (included in the established price of each ticket).
 - c. Ticketmaster service charges/fees as applicable.
 - d. The "Group Sales Commission" herein defined as a fixed commission of ten (10%) percent of Net Adjusted Gross Box Office Revenue derived from Group Sales tickets for the Show performances which shall be inclusive of any other Ticket Commissions payable to third parties and Ticketmaster service charges/fees in connection with all Group Sales of tickets to the Show.
 - e. The "Subscription/Member Commission" herein defined as a fixed commission of twelve (12%) percent of Net Adjusted Gross Box Office Revenue derived from the sale of tickets for the Show performances which are included in the Subscription Series which shall be inclusive of any other Ticket Commissions payable to third parties and Ticketmaster service charges/fees in connection with all Subscription/Member tickets sold to the Show.
 - "Credit Card Commission(s)" herein defined as a seven (7%) percent commission inclusive of processing or service fees charged by or payable to credit card companies in connection with the purchase of tickets through the Ticketmaster System ("Ticketmaster") to be retained by WTI for its sole account (as between the parties hereto) or via telephone. Single ticket purchases made at the box office or remote locations shall be commissioned at five (5%) percent. Credit Card Commissions will be assessed on all tickets purchased whether over the internet, at outlets, by phones and/or any other method of remote or automated ticket distribution and/or at the Box Office Commission and/or the (inclusive of the Group Sales Subscription/Member Commission where applicable, (i.e. any ticket sold through WTI's Group Sales or Subscription/Member department for which the Group Sales Commission or Subscription/Member Commission is charged shall not be assessed a separate Credit Card Commission).
 - g. The "Flash Sales Commission" shall mean the applicable commissions on Adjusted Net Ticket Revenue (i.e., GBOR less the above Ticket Deductions except for the Group Sales Commission and the Subscription Series/Member Commissions) derived from the sale of Show tickets through a flash provider e.g., on Groupon or Living Social's websites ("Flash Sales"). This commission will cover any



Credit Card Charges payable to third parties and all marketing Flash Sales expense, in connection with the sale of tickets to the Show. The Flash Sales Commission shall be paid to the applicable Flash Sales provider in accordance with the terms of the applicable agreement.

- 4. "Show Expenses" shall mean the sum of all the costs of the Show as set forth in this Subparagraph V.A.4 below, which shall be deducted from Net Adjusted Gross Box Office Revenue to arrive at "Net Ticket Revenue" (as defined below). The amount of the applicable Show Expense will be paid/reimbursed to WTI (or retained by WTI out of NAGBOR) or paid to Producer if so noted below at the time of each weekly Preliminary Settlement. The estimates set forth herein are based on Producer's representations to WTI that Show performances will not exceed 3 hours in length (inclusive of intermission). Should performance length change or if Producer otherwise changes production requirements, then the above estimates may increase and the parties shall adjust and reconcile any such estimated amounts against the actual expenses for Fixed Building Expenses/Local Back-of-House Labor at Preliminary Settlement.
 - a. "Fixed Building Expenses" which shall mean the total amount of \$280,000 for the Use Period (or \$140,000 per week) to be paid to WTI in consideration of Producer's use of the Premises and WTI's provision of front-of-house labor at the Premises in connection with the Show. The Fixed Building Expenses will not require documentation for settlement purposes.
 - b. "Local Documented Expense(s)" which shall mean the total of the following Show Expenses which shall require documentation for settlement purposes (and reconciled at settlement at actual cost and expense):
 - 1. The Marketing Budget for the Show to be reimbursed to WTI in connection with advertising and promotion for the Show at the Premises, estimated to be approximately \$500,000.
 - "Local Back-of-House Labor Expenses" shall mean all charges and expenses for Local Back-of-House Labor, including without limitation, FICA, workers' compensation, unemployment insurance and payroll administration fees associated with such Local Back-of-House Labor, all of which shall be staffed as set forth in attached Schedule B in consultation with the Show's Technical Supervisors with WTI's specifications and as mandated under any collective bargaining agreement applicable to the Premises/Building, including, without limitation, all stagehands, teamsters, wardrobe and hair staff, electricians, carpenters, loaders and other labor necessary or appropriate for load-in, rehearsals, technical rehearsals/preparation, performances and load-out of the Show at the Premises, except those charges designated specifically as Company Charges in sections IV.C.1 and IV.C.2 above, estimated to be approximately \$331,000 for the Use Period. All labor furnished by WTI hereunder shall be subject to any applicable union minimum requirements and shall be paid by WTI at such rates as may be specified in applicable agreements and if no such rates shall be so specified, at the prevailing rate of wages, including full reimbursement for WII's fringe benefit, payroll tax and other labor-related expenses.
 - "Local WTI Operating Expenses" shall mean all expenses incurred by WTI in connection with furnishing various elements, including, but not limited



to: catering for cast and crew; the Musicians Costs (set forth in Section IV.G above; the cost to produce a program ("Program") to be distributed at no charge to Show patrons; and equipment rental from third parties. The total amount of all of the foregoing is estimated to be approximately \$100,000 (which will be reconciled at settlement at actual cost) for the Use Period. Local WTI Operating Expenses shall not include, and WTI shall not be required to furnish, any personnel, services, equipment or materials that are to be firmished by Producer as set forth herein or are customarily provided by a theatrical producer of a touring show, all of which shall Producer's sole responsibility.

- c. The Producer Guarantee (to be paid to Producer as set forth below).
- d. The Show Royalty (to be paid to Producer as set forth below).
- 5. "Net Ticket Revenue" ("NTR") shall mean any NAGBOR remaining after all Show Expenses have been deducted therefrom and paid to the party entitled to be paid same hereunder.
- 6. "Company Charge(s)" shall mean amounts to be paid by Producer out of any monies payable to it hereunder and not charged to the Show as Local Documented Expenses/Show Expenses or otherwise paid by WTI.

B. <u>Payments to the Parties</u>.

1. Guarantee: Producer Royalty.

- (a) Producer will be paid a guarantee of \$260,000 per week (the "Guarantee"), payable at the weekly Preliminary Softlements as set forth in section C below (which are anticipated to occur on November 9, 2014 for the first week of the Show Run and on November 16, 2014 for the second week of the Show Run. Any payments to Producer hereunder are subject to the full execution of this Agreement and Producer's provision of a WTI with a W-9. WTI agrees to pay the Producer the Guarantee as and when due less all applicable taxes, irrespective of the actual GBOR. If there are less than sixteen (16) performances of the Show during the Show Run ("Performance Deficit"), due to Producer's acts or omissions or a "Force Majeure" resulting in WTI's inability to perform its obligations hereunder (as defined below) resulting in Producer's inability to perform hereunder, and/or in the event of a Performance Deficit in any week of the Show Run due to Producer's acts or omissions, WTI may reduce the amount of the next Installment payable hereunder by \$32,500 per each missed performance ("Per Performance Amount").
- (b) Producer will receive a royalty of ten (10%) percent ("Producer Royalty") of NAGBOR to be calculated and paid the Monday following the conclusion of week 1 and at Final Settlement for week 2 of the Show engagement.
- 2. Fixed Building Expenses: Ticket Deductions: Show Expenses. WTI shall receive the aggregate amount of applicable Fixed Building Expenses, all Ticket Deductions and the total amount of all of its Show Expenses hereunder (pro-rata for each week of the Show Run) at each weekly Preliminary Settlement. Payment of the foregoing shall be made from Show box office receipts. In the event of a shortfall between GBOR and Show Expenses, WTI shall be responsible for the difference.



- 3. Split of any NTR. To the extent any NTR remain after all of the above payments have been made to each respective party hereunder, there will be a further financial accounting at Final Settlement where any remaining NTR (i.e., any NAGBOR after deduction of Show Expenses) will be split seventy (70%) percent to Producer; thirty (30%) percent to WTL
- 4. If not already otherwise paid to or collected by WTI directly, WTI's share of "Net Merchandise Revenues" (both as defined in section VII below) shall also be paid to WTI with the balance paid to Producer at Preliminary Settlement.
- 5. All payments due to Producer hereunder are subject to applicable taxes including without limitation, MA withholding taxes (currently 5.20%) and MA corporate excise taxes.
- C. <u>Preliminary Settlement</u>: The parties shall conduct weekly preliminary settlements on the next business day after the final Sunday performance in each week of the Engagement ("Preliminary Settlement") at which time a written preliminary accounting of all Show Expenses (accompanied by settlement documentation) and information on ticket sales will be provided by each respective party (as applicable) with a level of detail satisfactory to the other. At each Preliminary Settlement, the parties shall be reimbursed or paid (as applicable) the amount of Show Expenses under in Sections V. A. and V. B above. For clarification, Producer shall receive Guarantee and Producer Royalty as per paragraph V.B.1. Within forty-five (45) days of the end of the Engagement, the parties shall conduct a final settlement for the Show ("Final Settlement") at which time a final accounting of all final Show Expenses (accompanied by settlement documentation) and any outstanding information on ticket sales will be provided. At Final Settlement, the parties will respectively by paid any sums shown to be due in the Final Accounting (including any amounts due under section V.B.3. above).

VL SPONSORSHIP:

- A. WTI maintains the right to retain all revenues in connection with WTI and/or venue sponsors. Citi is a sponsor of the Premises ("Citi Sponsorship") and no other sponsorships will be permitted in the financial services, financial institutions, banking and/or credit/debit card categories. No sponsor revenue from the Citi Sponsorship will be included within Net Sponsorship Profits or payable to Producer hereunder. Producer will not sell any sponsorships for the Show presentation that conflict with the Citi Sponsorship or the existing sponsors at the Building, (e.g., Polar Springs). Subject to any WTI or Building sponsor exclusivities or requirements, either party may sell local Show sponsors (or subject to the agreement of the other party, may retain third parties to do so) and retain any net revenue derived therefrom for their respective sole account.
- B. All Event advertising and promotional materials must include the official sponsor of the Citi Performing Arts Wang Theater lock-up logo ("Official Sponsor Logo") to be graphically displayed and otherwise utilized in the manner selected by WTI in its sole discretion. No other Event sponsor logo shall be greater in size or have more prominent positioning than the Official Sponsor Logo.

VII. MERCHANDISE. Producer or its designated merchandiser will provide WTI with ouvenirs ("Show Merchandise") to be sold by Producer's vendors at the Premises during performances of the Show in such quantities and at such prices as determined by tour concessionaire. Tour concessionaire shall pay to WTI an amount equal to twenty percent (20%) of "Net Merchandise Revenues" (defined below), ten percent (10%) for CDS/DVDS, in connection with Show



merchandise following the last performance each week. Such payment will be accompanied by a full accounting of all items sold during the week. The term "Not Merchandise Revenues" as used herein shall mean the entire proceeds derived from the sale or distribution of Show Merchandise at the Building, less all Federal, state and local taxes thereon and applicable credit card charges (credit card charges capped at 4%). Producer will be soley responsible submitting MA Sales Tax collected on Show Merchandise sales and must furnish WTI with a copy of its MA ST-1 Sales and Use Tax Registration upon request.

VIII. SHOW SCHEDULE/SEATING REQUIRMENTS

- A. The ticket prices (exclusive of the Facility Charge) and scaling for the Engagement have been mutually determined and are set forth in Schedule A attached hereto and incorporated herein.
- B. Unless mutually agreed, each party hereto shall be entitled to 675 complimentary tickets over the run of the Show Engagement; provided that an additional number of complimentary tickets may be available to a party (to meet its contractual obligations to sponsors and other third parties as applicable), subject to the prior reasonable approval of the other party. The following complimentary tickets will also be allotted over the entire Show Run: press-100 (P1); and marketing and promotion-330 (P1), 1320 (P2), 1320 (P3) and 1980 (P4). Any complimentary tickets not used by Producer or WTI shall be returned to the Box Office reasonably in advance of the applicable Show performance for sale to the general public.
- C. WTI shall hold one hundred forty (140) house seats for WTI and/or its designee's purchase. Seventy (70) of such seats shall remain available for WTI's use until 72 hours before cutain time at which time they will be released for sale to the general public with Seventy (70) seats remaining available until 24 hours before curtain time.
- D. WTI shall have the further right to reserve seats for the Event for purchase by Citi ("Citi") customers at full price through customary ticket distribution channels commencing prior to, on or after the date that tickets for the Event are made available for sale to the general public (together, the "Sponsor Tickets"). The number and location of the Sponsor Tickets shall be determined pursuant to the existing sponsorship agreements between WTI and Citi (the "Sponsor Agreement"). In the event that the Sponsor Tickets are not purchased by Citi customers they will be made available to WTI's Box Office for sale to the general public pursuant to the schedule provided under the Sponsor Agreement. Citi is the exclusive credit/debit card/banking/financial services and planning/investment banking sponsor of the Premises/Building. Neither Producer, nor its agents, sponsors or designees shall reserve, allocate, offer or use any consignment or other tickets to the Show for the purpose of any VIP package, special or exclusive program, sponsorship or promotion or other arrangement that grants consumers access to such tickets with the use of any credit card that competes with Citi (other than as a normal purchase of an Event ticket from Ticketmaster or the Building's box office).
- IX. NON-COMPETE: The clause shall not be precedent setting Producer represents and warrants, that the Show will not be performed within a 75 mile radius of the Building (the "Territory") during the period commencing 90 days before the first day of the Engagement and ending 90 days after the last day of the Engagement.
- X. BILLING/CREDITS: The parties shall determine their respective credits/billing for the Show in the Program. Credits are to be included in the Program for both WII executive and



production staff and Producer's staff, as well as other Show material and information that will be provided by Producer.

XI EXPLOITATION: Producer shall not have any right to reproduce or record the Show, or authorize others to transmit, reproduce or exploit the Show either live or through any means of electronic media distribution, (including without limitation, broadcast, cable or other television transmission, videotape, DVD, sound recording, film, on-line, streaming or by any other means) whether now known or hereafter developed, at or from the Premises, absent WTI's prior written approval.

XII. REPRESENTATIONS AND WARRANTIES:

A. WTI represents and warrants to Producer that:

- 1. It is a duly organized corporation, validly existing, and in good standing under the laws of the State of Massachusetts;
- 2. No provision of its partnership agreement, or any other agreement, instrument or understanding to which it is a party, or by which it is bound, has been or will be violated by its execution and performance of this Agreement;
- 3. This Agreement has been duly executed and delivered by it, and this Agreement is its legal, valid and binding obligation and is enforceable against it in accordance with its terms (except insofar as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, or similar laws affecting creditors' rights generally, and except as to the availability of equitable remedies); and

B. Producer represents and warrants to WTI that:

- 1. It is a duly organized corporation, validly existing and in good standing under the laws of the State of Maryland;
- 2. No provision of its Articles of Incorporation, or By-Laws, or any agreement, instrument or understanding to which it is a party or by which it is bound, has been or will be violated by its execution and performance of this Agreement;
- 3. This Agreement has been duly executed and delivered by it, and this Agreement is its legal, valid and binding obligation and is enforceable against it in accordance with its terms (except insofar as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and except as to the availability of equitable remedies);
- 4. The intellectual property contained in the Show is or will be owned or controlled by Producer and use thereof in accordance with the terms and conditions of this Agreement will not violate the rights of any person or entity.
- 5. Producer has timely secured all rights necessary to produce, present, advertise and/or market the Show and that at no time during the Use Period will the Show or any of Producer's activities in connection therewith violate or infininge upon the rights of any third parties. Such rights include (i) all necessary rights for WTI's use of the tradename/trademark, "Annie", associated Show logos and designs, and names, pictures, names, images and likenesses of the Show and all persons appearing in the Show in connection with advertising, marketing, promotion and



presentation of the Show at the Premises have been obtained by Producer; and (ii) WTI's use thereof for this purpose will not violate or infringe upon any rights of any party.

XIII, INDEMNITY:

- Producer will indemnify, defend and hold harmless Wang Theatre, Inc., The Wang Center for the Performing Arts, Inc., New England Medical Center Hospitals Inc., NEMC Real Estate Company, Inc., MSG Holdings, L.P., The Madison Square Garden Company, MSG Boston Theatrical, LLC., and their owners, partners and respective parent and affiliated entities, whether direct or indirect, and all directors, officers, employees, agents, licensees, contractors, and successors and assigns of any of the foregoing (collectively, the "Affiliates"), from and against any and all claims, liabilities, losses, damages, judgments, settlement expenses, costs and expenses whatsoever (including court costs, attorneys' fees and related disbursements, whether incurred by WII in actions involving third parties or in actions against Producer for claims under this Agreement) (individually, a "Loss" and collectively, the "Losses") arising out of or in connection with: (i) the breach by Producer of any of its agreements or covenants under this Agreement; (ii) the untruth of any of its representations and warranties hereunder; (jii) the conduct and presentation of the Show/Event including any preparation for or move-in or move-out of the Event, any hospitality function, reception, promotional event or similar event hosted by Producer or any talent appearing in the Event; and/or any sound recording, filming/videotaping, telecasting or other media exploitation of the Event (if so authorized by WTI); and (iv) the use of the Building or the Premises. or any part thereof, in connection with the Event including, but not limited to, areas utilized by guests attending the Event, box office areas, escalators, elevators, stairs, seating areas, lavatories, restaurant and concession areas and all areas and facilities utilized for ingress and egress of guests.
- B. Without limiting the provisions of subparagraph (c) above, Producer will defend, indemnify, and hold harmless WII and the Affiliates for any damage to the property (whether in or about the Premises/Building) of WII, the Affiliates or any third party during the Use Period whether caused by Event participants, production personnel, patrons or otherwise. All repairs to the damaged property of WII will be made by firm(s) designated by WII. The charges for such services will not exceed the charges generally prevailing for comparable services.

XIV. INSURANCE.

- A. Requirements. In connection with the Event, Producer will obtain and maintain the following insurance with insurance companies licensed to do business in the State of Massachusetts and with a minimum of an "A" rating in the current edition of Best's Insurance Guide:
- (1) Public Liability Insurance. Commercial General Liability Coverage (including coverage for personal and bodily injury, third party property liability coverage, blanket contractual liability, liquor liability, host liquor hiability, products/completed operations and non-owned/hired automobile liability), which covers WTI, the Affiliates, Producer and each of their respective directors, officers, employees, agents, licensees, contractors and successors and assigns in a minimum combined single limit of liability of Five Million Dollars (\$5,000,000) for personal and bodily injuries to (or the death of), or property damage sustained by, one or more persons in any one occurrence arising out of, or in connection with, the Event and/or the use of the Premises or the Building, or any part thereof during the Use Period; and
- (2) Other Insurance. Workers' Compensation Insurance, Employer's Liability Insurance and all other insurance coverage of similar character applicable, or relating to, the



employment of Producer's officers, directors, employees, servants, agents and independent contractors, with limits as required by law.

B. Pyrotechnics and Special Effects Insurance. With respect to the use of any and all laser and/or pyrotechnic devices or special effects approved by WTI hereunder, Producer will ensure that (i) Producer's insurance policy covering the Event will not contain an exclusion for pyrotechnics, explosives and/or confetti drops or other special effects; and (ii) the person(s) supervising and conducting any display of pyrotechnics, explosives or special effects will be licensed professional in compliance with Law with a Commercial General Liability insurance policy in minimum limits of Five Million Dollars (\$5,000,000) per occurrence specifically endorsed to include coverage for such activities naming WTI and its Affiliates as additional insureds and loss payees as their interests appear under such policy.

C. Certificates:

- (1) Certificates evidencing all insurance required hereunder will be delivered to WTI by Producer at least thirty (30) days in advance of the first day of the Use Period. The certificate evidencing the Commercial General Liability Coverage will expressly state that the policy includes blanket contractual liability coverage and name Wang Theatre, Inc., as the certificate holder. If such certificates are not delivered to WTI by the date required, in a form and from an insurer satisfactory to WTI, WTI will be entitled to treat such failure as a material breach of this Agreement. In such case, WTI, at the sole cost and expense of Producer, will have the right, but not the obligation, to purchase the Commercial General Liability Coverage and/or Property Damage Coverage required hereunder to protect the interests of the additional insureds set forth in clause XIV.C.(2) below. WTI's failure to purchase said insurance coverage, in whole or in part, will not give rise to any claim or defense by Producer against WTI, and will not relieve Producer of any of its obligations under this Agreement.
- (2) Certificates of insurance evidencing the insurance required under this Agreement (excepting Workers' Compensation Insurance) will contain the following endorsement:

"Additional Insureds: Wang Theatre, Inc., The Wang Center for the Performing Arts, Inc., New England Medical Center Hospitals Inc., NEMC Real Estate Company, Inc., MSG Holdings, L.P., The Madison Square Garden Company, MSG Boston Theatrical, LLC., their owners, and partners and all of their respective parent and affiliated entities, whether direct or indirect, and all directors, officers, employees, agents, licensees, contractors and successors and assigns of any of the foregoing. Such coverage will be primary for all purposes, without any right of contribution."

- (3) The policy will have no deductible or self-insured retention unless approved by WTI prior to the Event.
- (4) All certificates of insurance will provide that such policies may not be cancelled or modified in any mammer upon less than thirty (30) days prior written notice to WTI. For an Accord or similar certificate, the words "endeavor to" and "but failure to mail such notices will not impose any obligation or liability of any kind on upon the company, its agents or representatives" must be crossed out of the cancellation clause on each certificate of insurance. No certificate will be accepted with a disclaimer provision stating that coverage is not conferred on the Additional Insureds absent a special endorsement (unless such endorsement is provided with the certificate).



- (5) The limitations of liability required hereunder will be on a "per event" basis (rather than an annual aggregate).
- D. The indemnity set forth in Subparagraph XVI. A. above shall include injury or death of any employee, agent, contractor or subcontractor of Producer or WTI, or patron of the Building, and shall not be limited in any way by any amount or type of damages, compensation or benefits payable under any applicable Workers Compensation, Disability Benefits or other similar employee benefits acts and shall survive expiration of the Term of this Agreement.

XV. TERMINATION:

- A. This Agreement may be terminated by either party effective upon receipt of written notice if (a) the other party becomes bankrupt or files for protection under the bankruptcy laws or in similar circumstances including the filing of a voluntary or involuntary petition in bankruptcy by or against a party to this Agreement, whether for the purpose of reorganization or otherwise (unless such petition is discharged within 60 days of such filing), the admission of such party of its inability to pay its debts generally as they become due, such party's general assignment for the benefit of its creditors or the appointment of a receiver or trustee for such party or its property or such party otherwise takes the benefit of any insolvency act; or (b) the other party fails to perform any material term or condition of this Agreement and does not cure such failure within 10 days of written notice to cure by the non-breaching party.
- B. No termination of this Agreement shall be deemed to limit any other rights or remedies, at law and in equity, otherwise available to the parties.
- XVI. STANDARD TERMS AND CONDITIONS. Annexed hereto are WTI's Standard Terms and Conditions (the "Standard Terms and Conditions") which are incorporated herein by reference. In the event of any inconsistency between the terms and conditions contained herein and such Standard Terms and Conditions, the provisions contained herein shall prevail. Producer acknowledges that it has read and understands the Standard Terms and Conditions.

XVII. APPLICABLE LAW; GOVERNING LAW/JURISDICTION: This Agreement shall be construed in accordance with and governed by the laws of the State of Massacusetts without regard to its conflicts of laws decisions. Any litigation, action or proceeding arising out of or relating to this Agreement shall be instituted in any state or federal court located within the City of Boston and the parties hereby submit to the sole and exclusive jurisdiction of any such court in any such litigation, action or proceeding.

XVIII. CONFIDENTIALITY; NON-DISCLOSURE: Each of WTI and Producer represents and warrants to the other that, except as specifically authorized by one party to the other in writing, information and other data developed or acquired by or furnished in the performance of this Agreement shall be used only in connection with services provided to said party. Each party agrees that all materials and any and all matters concerning the other learned during the course of its services hereunder, as well as the terms and conditions of this Agreement, are trade secrets or are otherwise proprietary or confidential and are not to be disclosed, disseminated or otherwise revealed, in whole or in part, in any manner whatsoever, either during or after the Term of this Agreement, to anyone other than its attorneys, accountants or employees on a need-to-know basis, providing such persons treat such matters as confidential in accordance with this section or if compelled by valid legal process with notice to the other party and an opportunity to obtain a protective order if available.



IXX. RELATIONSHIP OF PARTIES: Each party to this Agreement is an independent contractor and not an agent, partner or joint venturer of the other. Neither party has the apparent or implied authority to do any of the following:

- A. Pledge the credit of the other or any of its employees;
- B. Bind the other under any contract, agreement, note, mortgage or other obligation;
- C. Release or discharge any debt due the other, or
- D. Sell, mortgage, transfer or otherwise dispose of any assets of the other.

XX. NOTICES: All notices required or permitted by this Agreement to be given to a party shall be in writing and shall be delivered personally or sent by certified or registered mail, return receipt requested, or by overnight courier or telecopied to the party concerned at its address as set forth below or telecopier numbers provided during the Term. Mailed notice shall be deemed to have been given 3 business days after being deposited in the United States mail. Notices sent by overnight courier shall be deemed received one day after being delivered to the overnight courier services for next day delivery. Notices sent by telecopier shall be deemed received in accordance with a confirmation so indicating.

All notices to Producer shall be addressed to:

Michael Orsino / Annie On Tour UC.
c/oThe Road Company
165 West 46th Street, Suite 1101
New York, NY 10036

All notices to WTI shall be addressed to:

WTI c/o
270 Tremont Street
Boston, MA 02116
Attention: Michael Szczepkowski
Vice President & General Manager

With a copy to:

MSG Holdings, L.P.

2 Penn Plaza - 16th Floor

New York, NY 10121

Attention: Josephine Vaccarello

Vice President
and

Legal and Business Affairs

MSG Holdings, L.P.

2 Penn Plaza - 19th Floor

New York, NY 10121

Attn: Denise Rubin-Carter

Vice President, Business Legal Affairs

XXI. NO ASSIGNMENT OF AGREEMENT AND SALE OF THE BUILDING Neither party to this Agreement may assign its rights or obligations hereunder without the prior written consent of the other party except that WTI may assign its rights and obligations to any entity that is controlled by or under common control with it, or to any entity acquiring all or substantially all of its stock or assets.

XXII. FORCE MAJEURE: In the event that fire, flood, earthquake, strike, labor dispute, riot, civil commotion or emergency, war, terrorist act (or related security or safety concerns), extreme failure of electrical utilities or transportation or any other event beyond the parties reasonable control ("Force Majeure Event") interferes with the load-in/load-out, rehearsals for and/or the Show Run at the Premises, neither party shall have any liability to the other for damages; provided however, that the parties will make best efforts to resolve whatever problems were caused by the Force Majeure Event in accordance with their respective obligations hereunder. Notwithstanding any Force Majeure Event, each party shall be reimbursed for their respective Show Expenses incurred by (or owed to) such party and be paid its respective share of Net Ticket Revenue, Net Sponsorship Profits and Net Merchandise Revenues earned by it hereunder up until the time of the Force Majeure Event, and thereafter in connection with the resumption of the Show Run (if interrupted due to the Force Majeure Event).

XXIV. PARAGRAPH TITLES: The head notes and capitalization contained in this Agreement are for convenience only and are not intended in any way to define or limit the construction or interpretation of any section of this Agreement.

XXV. COOPERATION AND APPROVALS: Each party agrees to use best efforts to cooperate and consult with the other party in an effort to speedily and amicably resolve any unforeseen difficulties or problems not covered by this Agreement.

XXVI. NO WAIVER: The failure of WTI or Producer to insist on the other party's strict compliance with the terms and conditions in this Agreement shall not constitute a waiver of WTI's and Producer's right to insist that the other party in the future strictly comply with any and all of the terms and conditions contained in this Agreement.

XXVII. REMEDIES CUMULATIVE: All remedies, rights, undertakings, obligations and agreements contained in this Agreement shall be cumulative, and none of them shall be in limitation of any other remedy, right, undertaking, obligation or agreement of any party.

XXVIII. SEVERABILITY: If any clause or provision of this Agreement shall be held to be invalid or unenforceable, such clause or provision shall be construed and enforced as if it has been more narrowly drawn so as not to be invalid or unenforceable and such invalidity or unenforceable and such invalidity or unenforceable that the clause or provision of this Agreement.

XIX. ENTIRE AGREEMENT: This document contains the entire agreement and understanding between the parties relating to the contents hereof and supersedes all prior agreements between the parties. This Agreement may not be altered, amended, modified, or otherwise changed, nor may any of the terms hereof be waived, except by an instrument in writing signed by both parties. Facsimile signatures herein shall be deemed originals for all purposes. This document may be signed in one or more counterparts, each of which shall be deemed an original, and all of which together shall be deemed to be one and the same document.



We look forward to working with you on this exciting project, and anticipate a mutually successful relationship.

WANG THEATRE, INC.

Mike Szcepkowski

Vice President & General Manager

AGREED AND ACCEPTED:

Annie on Tour, LLC
-The ROAD COMPANY

Authorized Signatory

STANDARD TERMS AND CONDITIONS - CONCERTS/SHOWS

I. COMPLIANCE WITH LEGAL REQUIREMENTS.

- A. Producer (including, without limitation Producer's employees, contractors and all other persons under its authority) will comply with all applicable laws, orders, ordinances and regulations and with any lawful direction of public officers relating to the Show, the Engagement, the Building and its use and occupancy hereunder.
- B. Producer will be solely responsible for the discharge of all of Producer's obligations under all applicable law, with respect to Producer's employees and contractors, including, without limitation, in connection with tax withholdings (domestic and foreign, if applicable) workers compensation and disability insurance.
- C. Producer will comply with WTI's obligations to its sponsors in connection with activities in the Building and Producer will not do anything contrary to or inconsistent with such obligations. Absent WII's prior written approval, no signage or other element of an Artist/Producer sponsor may be displayed at the Building.
- D. In the event any minor is scheduled to appear, Producer will comply with the applicable provisions of law, including, but not limited to, the Education Law of the State of Massachusetts and any other applicable rules or regulations. Producer shall supply WTI with copies of valid Massachusetts working papers for such minors prior to the Show. Otherwise, minors are not permitted in the non-public areas of the Wang Theatre without the prior written permission of WTI and appropriate supervision.
- E. In accordance with law, smoking is prohibited throughout the entire Building. Anyone violating this rule will be subject to removal from the Building by WTI's security.

II. COMPLIANCE WITH WTI SECURITY AND OTHER RULES.

- A. As between the parties, any and all security requirements or problems will be brought to the attention of, and will be subject to the ultimate authority and control of WIT's security personnel. It is hereby understood and agreed that WII, in its sole discretion, shall be entitled to utilize special security equipment anywhere in the Building, including, but not limited to, any entrances to be utilized by the public or Producer or its employees, agents or backstage guests. In any such case, all costs and expenses incurred in connection therewith shall be Show Documented Expenses.
- B. Producer, its agents, employees, patrons and guests will abide by WTI's rules and regulations for the safe use, occupancy and operation of the Building. Anyone employed by Producer will be under the general supervision of WTI (but not as an agent or employee of WTI). Producer agrees that any security personnel provided by Producer will not interact with patrons of WTI. Only WTI may remove any person it deems to be undesirable or disorderly from the Building. WTI security has the sole right, in its discretion, to take any steps to prevent injury to persons or damage to property in and around the Building. Producer agrees to notify WTI's Director of Security in advance of the Show if any performers intend to enter the audience area



during performances.

- C. No weapons of any kind or nature will be permitted to be brought into the Building and WTI shall have the right, in its sole discretion, to request an advance weapon check for any person entering the Building. Any person found carrying a weapon will not be permitted to enter the Building.
- D. In no event shall Producer, or any designee, employee or independent contractor of Producer, take any action or fail to take any action in connection with the Show that would or might interfere with or deleteriously affect any existing union jurisdictional arrangement relating to the Premises, the Building or otherwise interfere with or deleteriously affect the regular business operations of WTI.
- E. Producer acknowledges and agrees that all of Producer's, Artist's and their respective employees, contractors' and/or agents' personal property, including, without limitation, Artist's instruments and equipment brought or permitted by Producer into the Building will be at Producer's sole risk. WTI will not be liable to any party for any loss of or damage to such property.
- F. The parties will coordinate the number of backstage passes and limit access to the entrance designated by WTI. WTI's security will remove any person from the backstage areas in the interest of order, quiet or safety. Producer's guests will have tickets and be seated in the auditorium or in another area designated by WTI (e.g., a green room). Only persons directly involved with the production or who have been cleared by WTI will be permitted backstage.
- G. Producer acknowledges that on-site emergency medical technicians and stand-by ambulance services may be furnished at the Show by such party as may be contractually authorized by WTI to satisfy its requirements with respect to such services. Any other vendors desired by Producer for such services must be approved in writing by WTI.
- III. PRODUCER'S RESPONSIBILITIES IN CONNECTION WITH THE SHOW. In accordance with applicable rules and regulations, Producer must comply with the following:
- A. Producer understands and agrees that the sound level limit for the Theater is 105 dba, measured on the A-weighted scale at the Theater's rear wall, approximately 110 feet from the stage. Sound levels, excluding applause, will be strictly monitored by the Theater's manager and soundman. If, at any time during a performance, the average sound level during a five-minute period exceeds 105 dba, WTI shall discuss with Producer and a mutually acceptable resolution will be determined.
 - B. All equipment must be either upstage or downstage of the fire curtain line.
- C. Producer and WTI shall comply with the requirements of all laws, orders, regulations, directives and prescriptions of Federal, state, county and municipal authorities which shall impose any duty upon WTI or Producer with respect to the Premises, and Producer shall cause all artists, performers and other participants in the Show to cooperate with WTI and Producer with respect to such matters (including, without limitation, any requirement under the Americans with Disabilities Act to provide certain auxiliary aids or services or access to tickets for purchase by persons with disabilities in connection with the Show). Producer shall comply with all rules, orders, regulations or requirements of the Board of Fire Underwriters or any comparable body and shall not do or permit anything to be done in or about the Premises or the Building or bring or keep anything



therein which shall increase the rate of fire insurance on the Building or on property located therein. No gasoline, acetylene or other fuel or combustible will be admitted to the Building without the approval of WII and the Bureau of Combustibles of the Fire Department; provided however, that under no circumstances whatsoever shall propage be admitted to the Building. Any decorating or other work, and the material therefor, done or furnished by Producer shall be subject to approval by WTI and the Fire Department and, unless so approved may be prevented or removed by WTI. All scenic elements, decorations and other combustible materials must be fire-proofed, and Producer shall deliver to WTI a flame-proofing certificate in the form specified or required by and satisfactory to the Fire Department or any other agency of the City of Boston having jurisdiction with respect thereto or else such elements will not be permitted into the Building. Producer must deliver to WII, no later than two weeks prior to the load-in: (a) a description of any stage drapery being used for the Show, its placement and use; (b) a twelve inch square sample of each drapery used; and (c) a description of all special effects or open flames including material, description of use, any applicable MSDS sheets, duration and timing within show. Fabric samples must be able to self-extinguish immediately or not ignite during a three minute torch test. In the event that fire watch or permit re-testing fees are required due to failure of Producer's materials to pass the Fire Department test, or due to Producer's failure to provide samples for testing in a timely fashion, all such fees shall be a Producer Cost. No cut evergreens shall be permitted in the Premises or the Building.

- D. Producer hereby agrees that with respect to the use of any and all laser and pyrotechnic devices to be operated in connection with the presentation of the Show, if any, Producer shall comply with all laws, rules, regulations, prescriptions, criteria and policies of all Federal, state and local authorities or agencies applicable thereto, including, without limitation, the then current: (i) rules of the Massachusetts State Department of Labor and the Food and Drug Administration Compliance Policy Guide (or any successors thereto); and (ii) rules, regulations and directives of the Fire Department of the City of Boston. Producer shall deliver all supporting documentation confirming Producer's compliance with the above requirements at least seven (7) days prior to the first performance of the Show. Notwithstanding all of the foregoing, Producer shall not use any laser and/or pyrotechnic devices whatsoever without the prior written consent of WTI, which may be withheld within its sole discretion.
- E. There shall not be any solicitation of funds at the Building. In the event any portion of ticket proceeds are to be donated to a charity, Producer shall have the obligation for compliance with all applicable charitable co-venturer requirements and law, including, without limitation, any filing requirements.
- IV. CREDIT CARD CHARGES. Producer acknowledges that a portion of the proceeds not to exceed \$10,000 from the sale of tickets may be held back in order to cover the costs related to chargebacks for fraudulent credit card sales or damages arising from any credit card sales that occur following the Preliminary Settlement to be reconciled at the Final Settlement. Producer and WTI agree that they each shall be liable for and each of them indemnifies and holds harmless Ticketmaster, the other party and their respective affiliates from and against fifty percent (50%) of any lost revenues, chargebacks or damages arising from any credit card sales that occur following the settlement of the Show.
- V. REPRESENTATIVES/COORDINATION OF PRODUCTION. Producer confirms that it has designated to WII in writing Producer's representative with authority to act for Producer in coordinating preparation for the Show with representatives of WII. Producer represent that such designee will have the full authority to make any production or business decisions in regard to the

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Show on Producer's behalf however Producer shall have final determination of changes to artistic elements of the engagement. WTI will not be liable if Producer does not have Producer's designee available and such unavailability results in a delay or stoppage of work on the Show due to Producer's inability to make business or production decisions or authorize the expenditure of monies.

VI WTP'S TRADEMARKS AND DESIGNS. The words "Wang Theatre", "Citi Performing Arts Center" and "Wang Theatre Presents" are registered service marks belonging to WTI and/or its affiliates or sponsors (the "Service Marks"). Similarly, WTI's logos, designs and other artwork and images of the Building (collectively, "Designs") are federally protected. No use of the Service Marks or Designs shall appear in any artwork, copy, advertising, or promotional or other materials in any media without WTI's prior written approval in each case for each use. Each such use of any of the Service Marks or Designs shall be followed by the designation directed by WTI. Producer's right to use the Service Marks and/or Designs after such approval shall be non-assignable, non-transferable and limited by this Agreement.

VII. ADVERTISING/PROMOTIONS/PUBLICITY.

A. WTI will arrange for all advertising, promotion and publicity for the Show subject to Producer's approval, such approval not to be unreasonably withheld, the costs for which are Show Expenses. Producer has provided or will provide WTI with approved copy, names, logos, likenesses, biographies and other materials which WTI shall have the right to use in all advertising, promotion and publicity for the Engagement and WTI.

B. Producer agrees that the Show shall be part of a venue sponsored concert series at the Building (the "Show Series"). The Show may also be a "Citi Card Event". Accordingly, all advertising and promotional materials for the Show, Show tickets, WTI's program, press releases and pre-Show, intermission and post-Show announcements in the Building may mention the Show Series. In addition, all advertising and promotion for the Show by the parties in any format/media will include the Building name and/or logo and WTI website address (at least equal in size and prominence to Producer's website, if contained in such advertising).

C. Producer hereby authorizes the Show to be included in WTI's complimentary program, club suite brochures and other promotional material, if WTI determines in its sole discretion to distribute same.

VIII. TICKETS AND SEATING.

A. All production kills shall be mutually agreed upon by the parties and shall not be utilized for purposes of complimentary seating. Any party using a production kill seating location for compliment seating shall pay for each such seat at the full price of the paid seat located nearest to such production kill seating. WTI shall hold for itself or persons designated by WTI, at regular prices, 140 house seats in locations determined by WTI. 70 of such seats shall remain available until 72 hours before curtain time and 70 seats shall remain available until 24 hours before curtain time. Producer acknowledges and agrees that there are 157 "Dress Circle" seats at the Building which are off-manifest and will not be included Gross Box Office Receipts.

B. Ticket Scaling. Ticket scaling and the ticket prices for the Show have been will be mutually approved and are set subject to the requirements of the Americans with Disabilities Act.

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- C. Intentionally Deleted.
- D. Ticket Purchases. Producer shall have the right to reserve and purchase up to forty
- (40) scats per performance, 36 on a 48 hour hold, and 4 emergency holds, for the Event for its own use or the use of its designees (exclusive of the complimentary seating reserved for the use of WTI or its designee(s) as described in Section VIII of the Agreement). In the event that WTI does not use any or all of such seating prior to the Event, it shall be made available to WTI's box office for sale to the general public.
- E. Ticket Refunds. WTI shall have the right to deduct any ticket refunds from available NAGBORLicensee acknowledges that WII may hold back from box office or any other receipts due Licensee hereunder at settlement or otherwise a reasonable amount, determined by mutual agreement of both parties to process and issue patron refunds (as circumstances warrant) consistent with WTI's customary practices and procedures from time to time. Licensee further acknowledges that WTI may issue such refunds in the event of equipment failure, performer not performing equivalent to billing provided Producer has not substituted any performer, inclement weather or for any other cause reasonably deemed appropriate by WTI.
- F. CITI Tickets. WTI reserves the right, at its sole discretion, to offer the following pre-sale opportunities at full ticket prices prior to the first public sale of tickets to any performances of the Show: 72-hour pre-sale opportunity for members of The Club followed by a 48-hour pre-sale opportunity for Citi Card holders.
- IX. ADA REQUIREMENTS. In compliance with the Americans with Disabilities Act, certain seating identified in the manifest may not be available for sale to the general public.
- X. HOUSE OPERATIONS AND MERCHANDISE.
- A. WTI reserves the right to operate all bars and concessions solely for its own account.
- B. All merchandise must be consistent with WTI's customary quality standards and shall be subject to WTI's approval. WTI authorizes the Producer (or its designated merchandiser) from Show specific merchandise to handle the sales of merchandise. WTI will be entitled to receive 20% of Net Merchandise Revenue, 10% for CDs/DVDs, from Show Merchandise, The term "Net Merchandise Revenues" as used herein shall mean the entire proceeds derived from the sale or distribution of such Merchandise, less (a) all Federal, state and local taxes thereon; (b) credit card charges/commissions and (c) taxes. Producer will be solely responsible submitting MA Sales Tax collected on merchandise sales and must furnish WTI with a copy of its MA ST-1 Sales and Use Tax Registration.
- XI. NO REPRODUCTION OF THE CONCERT: EXCEPTIONS FOR PRE-APPROVED NEWS/PUBLICITY PURPOSES AND CERTAIN PHOTOGRAPHS.
- A. Producer will not, or make arrangements or contract for, or permit others to engage in any recording, broadcasting, televising, filming, taping, downloading, streaming, webcasting, phone casting, transmitting by any other form of electronic media, or any other kind of recording, reproduction or exploitation of whatsoever nature, whether now know or hereafter

developed, in connection with either the Show or the Building, in the absence of a separate written agreement signed by all parties hereto and payment to WTI of its customary origination fee and all related costs and expenses.

B. Notwithstanding Paragraph XII (A), Producer will be permitted to admit approved press photographers and news crews for news and publicity purposes only, provided that Producer advises WTI at least forty-eight (48) hours prior to the Show of the identity of such photographers and/or news crews and receives WTFs approval therefor.

XII. REPRODUCTION OF CONCERT BY WIL

- A Producer agrees to allow WTI to photograph the Show and to use such photographs for WTI archival and promotional purposes, subject to Producer's prior reasonable approval.
- B. Producer agrees that WTI will have the right to admit its customary number of approved press photographers and/or news crews for news and publicity purposes only.

XIII. RESERVED RIGHTS IN BUILDING. WTI and its designees at all times has free access to all parts of the Building Excluding dressing rooms unless accompanied by Producer's representative. WTI reserves and retains the absolute right to erect display advertising in the Building, and to make any announcements in connection with the safety, security, and/or welfare of Show patrons and to make such other announcements as it desires, in any manner which does not interfere with the Show.

XIV. CONDITION OF BUILDING: MAINTENANCE OF BUILDING.

- A. WTI makes no representations with respect to the Building. Producer has examined the Building and has concluded that it is in good repair, suitable for Producer's purposes on an "as is/where is" condition.
- B. Producer acknowledges that other parts of the Building may be used during the Term for activities other than the Show which shall not interfere with the normal operations of the engagement. WTI operates a tour which may enter the Auditorium during the Term excluding during Performances and/or Rehearsals. WTI will have full authority to establish the schedules for the use and availability of all Building services and facilities in its reasonable, business judgment,, and Producer agrees to comply with any schedules and sharing arrangements so established. Building entrances and exits will be locked and opened as WTI will determine after consultation with Producer, by Producer's designee, will be present at all times during the Show.
- C. Producer shall not mark, paint, drill into or in any way mar or deface any part of the Premises or the Building except lagging, if necessary. Producer shall not install, display or erect any lettering, signs, pictures, notices or advertisements upon any part of the outside or inside of the Building or make any alterations or improvements in or to the Premises or the Building without the prior written consent of WTI. Nothing contained herein shall be deemed to limit or restrict WTI's right to sell and display permanent or non-event related advertising or sponsorship signage or elements (including, without limitation, vehicle displays in the Building) in any portion of the Building or event-related signage for events other than the Show.

XV. DEFAULT.

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- A. If before or during the Show (i) Producer defaults in the performance or observance of any of Producer's material obligations or agreements contained herein, including cancellation of the Show by Producer for any reason (including, but not limited to Producer's inability to obtain immigration clearance or other immigration problems), not caused by Force Majeure (ii) Producer makes an assignment for the benefit of creditors or takes the benefit of any insolvency act, (iii) a case or proceeding is commenced, or petition filed, by or against Producer under an insolvency act or (iv) Producer vacates or deserts the Building, then, and in any such event, this Agreement, in its entirety will expire fully and completely, effective upon notice to Producer. All of Producer's rights hereunder will cease, Producer will quit and surrender the Building to WTI, and Producer will reimburse WTI for the actual amounts paid by WTI or contracted to be paid by WTI as of the date of the default and required to be paid thereafter in connection with the Show, paid and lost profits. Notwithstanding the foregoing, WTI shall retain all its rights and remedies under law or equity or otherwise.
- B. In the event of Producer's breach or threatened breach of any of Producer's material obligations hereunder, WTI will have the right of injunction and the right to invoke any remedy allowed at law or in equity or otherwise.
- XVI. END OF TERM. At the end of the Term, Producer immediately will remove all Producers property from the Building and surrender the Building to WTI. The Building will be in clean condition and good order, ordinary wear excepted. Producer agrees to pay any costs resulting from Producer's failure to do so, or from damages to real or personal property belonging to or supplied by WTI, due to Producer's acts or failures to act or due to the acts of Producer's employees and/or independent contractors subject to a reasonable opportunity to cure.

XVII. MISCELLANEOUS.

- A. Consent. No consent, approval or waiver will be deemed granted unless in writing. Consent, approval or waiver may be granted or withheld in the discretion of the party whose consent, approval or waiver is requested.
- B. Invalidity. A determination that any provision of this Agreement, as applied to either party or to any circumstance, is either void or unenforceable will in no way effect any other provision of this Agreement or the validity or enforceability of all other provisions of this Agreement.
- C. Inconsistency. In the event of any inconsistency between the long-form agreement and these STC, the provisions of the long-form agreement will prevail.



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WANG THEATRE, INC. Venus: Wang Theatre PROMOTER ESTIMATE Dicis of settmets: 11/18/13 Artist: Annie Show Date(s): November 4-16, 2014 # Daye Occupied: 13 # Performances: Promoter: WTi EXPENSES Undocumented Expenses NOTER Rent \$280,000,00 Box Office \$0.00 Included in rent Cleaning \$0.00 included in rent Telephone/Internet \$0.00 included in rent **Documented Expenses Stagehands** \$265,865.55 Detail on 'Stagehande' lab below Ushera \$0.00 included in rent Wardrobe \$42,752.51 Detail on 'Wardrobe' (ab below Musicians \$89,468.56 Detail on 'Musicians' tab below Teamsters \$12,523.41 Detail on Teamsters' tab below Hair \$10,545,13 Advertising \$0.00 Sound & Lights (Local) \$0.00 **Artist Production** \$0.00 Video Rental \$0.00 Spot Rental \$1,700.00 2 House spots + 1 rental Cataring \$500.00 "Assumes Load-out catering will be waived \$7,817.80 Detail on the 'Police & Fire' tab below Fire Police \$814.00 Detail on the 'Police & Fire' tab below Runners/Vans/Fuel \$0.00 Staging Rental \$0.CO Fumiture Rentel \$0.00 Towels \$0.00 Perking Permits \$450.00 Support \$0.00 Security \$0.00 Included in rent Backline \$1,000.00 Add'l Production \$3,600.00 Detail on 'Add'l Production' tab below Credit Cards BO @ 4% \$0.00 tod based on scaling 0.00% Pd by Licensee ASCAP . \$0.00 Paid by Promoter 0.00% Pd by Licenses BMI \$0.00 Paki by Promoter BESAC 0 Pd by Licensec \$0.00 Paid by Promoter \$0.00 Pd by Licensee Insurance \$0.00 Paid by Promoter

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5/29/2014 4:66 PM Annie 2014 Estimate 2 week (2)

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JACET Fund (C) Payroll Charpe (C)	1.00% 21.00%	\$1,049.63 \$1,049.63 \$22,040.53
Total Estimated Stagehands Ren of Show Experse	how Experse	\$181,674.SH
Gress Payrol Land-out	e de	\$30,000.32
Vecation @ 8.00% Subtoni Grose Pery & Vacation	8,00%	\$2,400.61 \$32,406.83
Contract Regodstion Holding @ Substate Gross Pay, Vaca	0.00% cetton & Holding	\$2.406.83
Avnutty & Persion & Persion & Persion & Welfere & JACET but & Description & Description & Person & Per	11.00% 11.00% 10.00%	\$1,620,34 \$3,684,76 \$5,186,08 \$324,07

TOTAL ESTIMATED STAGEMANDS EXPENSE \$200,000.00

#48,909,6H

Total Estimated Stagehands Load-out Expense

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ESTINATED EXPENSES - USHERS

Position			T Pay	Overtime Par	ne Pay	
	# Needed	# Perfs	Rate	#Perfs	Rage	Total Pay
	1	12	\$107.82	4	516773	21 Q40 75
set CU	2	121	\$77.00	4	\$145.50	2002
].	8	121	\$49.36		\$74 DA	62 4V7 64
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vator Op	2	12	X9.36	4	S74 04	64 776 00
	10	12	\$38.03	4	\$57.05	\$6 845.40
643	32[12	\$36.88	•	\$55.30	S71 247 88

Gross Payroll

\$45,128.24

Vacation @ 0.00% \$0.00

Subtorial Gross Pay & Vacation \$46,128,24

Contract Negotiation Holding @ 0.00% \$0.00

Subtotal Gross Pay, Vacation & Holding \$46,128,24

Payroll Charge @ 21.00% \$9,696.93

ESTIMATED EXPENSES - USHERS \$68,816.17

ESTIMATED EXPENSES - MUSICIANS

Total Estimated Musician Expense:

\$49,748.50	\$2,487.43	\$52,235.93	\$6,263,09
	5.00%	ay & Holding	11.99% 21.00%
imated Gross Payroll	Contract Negotiation Holding @	Subtotal Gross Pay & Holding	Penston @ Payroll Charge @
	Contract Nego		

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	\$0.00	30.00	Base Rate \$0.00	\$0.00	
Week 1	5 hours rehearsa	1 1/2 hr sound ch		500 + 095	Confractor@ 75%

TOTAL WAGE \$0,00

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CSTINATED EXPENSES - WARDROBE

Estimated Wardrobe Load-In Grose Payroff

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TOTAL ESTIMATED WARDROBE LOADJIN GROSS PAY:

Estimated Wandrobe Run of Show Grass Payrol

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TOTAL ESTIMATED WANDHORE RUN OF SHOW GROSS PAY:

Estimated Wardrobe Load-out Grass Payroll

TOTAL ESTIMATED WARDROBE LOAD-OUT GROSS PAY,

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\$2,050.40	\$162.43	\$2,192.83	20.00	\$2,182.63	\$98.68	\$210.28 \$460.40	\$2,971,29	\$28,467.21	\$2,118.88	\$28,608.18	\$0.00	\$28,608.18	\$1,287.28	\$8,007.30	\$24,761,36	9698.90	\$55.75	\$752.65	30.00	\$752.65	\$38.87	\$158.08 \$158.08	\$1,019.64
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Gross Payrol Load-in	Vacation	Subtotal Gross Pay & Vacation	Contract Negatiation Holding (2)	Slubstotal Gibes Pay, Vacer	Amulty @	Health & Welfare (B) Payrel Charge (B)	Total Estimeted Wardrobe Los	Gross Paynol Ran of Show	Verallen 🚱	Subtotal Gross Pay & Vecalion	Contract Negotletion Holding @	Subtotal Gross Pay, Vacar	Annety @ Health & Western @	Preyrol Charge @	(ota) Estimated Wardroba Run of 91	Gross Payrol Load-oxt	Vacation (§)	Subtobal Gross Pay & Vacedon	Contract Negotletion Holding (B)	Substal Gross Pay, Vacet	Available	Payred Charge (2)	Total Entimated Wardrobe Load

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TOTAL ESTIMATED WARDROBE EXPENSE

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ESTRIBLED EXPENSES - TEAMSTERS EXTRIBIBLY Teamster Line of Gross Paying.

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Suitedial Gross Pay & Holding

44,783.76 \$1,006.69 \$8.00 27.00% Payroll Charge @

Total Estimated Teamster Load-in Expense

Description of Work

\$4,366.09 \$5,988,5¢ \$578.00 \$918.88 Substated Gross Pay & Holding Perston @ Pryroll Charge @ Contract Negatinition Holding @ Gross Psyrol Lond-out

\$6.888.815 \$12,523.41 TOTAL ESTIMATED TEAMSTER EXPENSE Total Estimpted Teameter Land-out Expense

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ESTIMATED EXPENSES - POLICE & FIRE

Police' Expense Breakdown

Cell Load-in	*	# of Hra 12	Rate \$40.70	Total \$488.40
Show - Officers Show - Supervisor	0	6 6	\$40.70 \$56,10	\$0.00 \$0.00
Load-Out	1	8	\$40,70	\$325.60
TOTAL:				\$814.00
Fire' Expense Breakdown				•
Call Permits Materials Testing Fire Alarm Shutdown Fire Detail (manhrs)	# 10 n 12 n 1	/e	Rate \$85.00 \$20.00 \$440.00 \$35.20	Total \$85.00 \$200.00 \$5,280.00 \$2,252.80
TOTAL:				\$7,817.80

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NETworks Presentations, LLCSparkle Jolly Touring, LLC 7135 Ministrel Way, Ste 105
Columbia, MD 21045
Attn: Charmains McVicker Angels Rowles

Re: "ELF The Broadway Musical" at the Wang Theater November 17-December 6, 2015

Dear Charmaine Angels:

This letter shall constitute the agreement (the "Agreement") between Wang Theatre Inc. ("WII"), and NETweeks Presentations Sparkle Jolly Touring, LLC ("Producer") in connection with the production and presentation of the live theatrical show entitled, "ELF The Broadway Musical" (the "Show") at the Citi Performing Arts Center/Wang Theater (the "Building") in Boston, MA on November 17, 2015 through December 6, 2015, on the terms and conditions set forth herein.

I. LICENSE OF BUILDING FOR SHOW PRESENTATION:

- A. Subject to the terms hereof, WTI hereby grants Producer the license and privilege (the "License") to use the area designated as the theater (the "Premises") within the Building for load-in, technical rehearsals and preparations, rehearsals, presentation and load-out of the Show (collectively, the "Event"), during the period commencing at 6:00 A.M. on Tuesday, November 17, 2015 and ending at approximately 4:30 A.M. on Monday, December 7, 2015 (the "Period"), in accordance with the schedule set forth in subsection II. B. below.
- B. Producer will provide and pay for a fully produced and cleared Show with all rights required to present, promote, advertise and market the Show, including but not limited to: all talent and other east; music, orchestrations, charts and all other intellectual property; all rights, licenses and clearances; parking permits or arrangements for Show touring trucks; supplemental sound, lights and audio-visual equipment; and any other elements; equipment or other materials (which are not included in the licensed Premises) and all associated payments and fees. Producer will perform necessary set modifications to be mutually agreed in writing in advance to conform the scale of the Show to the size of the stage/proscenium of the Premises if and as required.

II. TERM; USE PERIOD:

- A. Tenn: The term of this Agreement will commence as of the date hereof and continue through "Final Settlement" (as defined in section V.C. below) for the Show engagement at the Premises ("Term").
- B. <u>Use of Building</u>. The Premises will be available (excluding the Dark Days as defined below) for the use of the Show ("Use Period"), based on the following schedule:
 - Load-in/Rehearsals Tuesday, November 17, 2015 at 6:00 a.m. through Tuesday, November 17, 2015 up to the time of the first performance.
 - Show Performances –Tuesday, November 17, 2015, through Sunday, December 6, 2015 ("Show Run" or "Engagement").

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Load-Out - following the last performance of the Show.

Twenty-four (24) performances of the Show are currently contemplated as set forth in the show achedule attached hereto as Schedule A and incorporated herein; however, if circumstances so warrant, WTI and Producer may mutually determine to either reduce the number of Show performances (in which case the Guarantee will be reduced on a pro-rate basis as set forth in subsection V.B. I. Below unless such alteration is necessitated due to a material default by WTI) or alter the Show performances schedule.

- C. WII retains the exclusive right to license the Premises to third parties during the Use Period: (i) on the dark days of Monday, November 23, 2015 and Monday, November 30, 2015 and (ii) before 5:00 P.M on any other days during the Period when only a. Show performance is scheduled after 7:00 P.M (collectively, "Dark Days"). Producer will be notified as to any such uses by third parties on Dark Days. If applicable WII will be responsible for any expenses incurred in the removal and set up of Producer's staging and sets for the purposes of any such third party use. Such third party use may include the presentation of an event on the stage of the Premises without removing Producer's staging and sets (i.e., in front of such staging and sets). A member of Producer's staff may be present at any on-stage event and WII will be responsible for any costs incurred as a result of such third-party on stage event (as between the parties hereto).
- D. Producer will notify WTI of Producer's estimated arrival time at the Building. Unless otherwise specifically agreed in writing by WTI, all load-in work will be conducted between the hours of 6:00 a.m. to 11:59 p.m. on the load-in days specified in subsection II.B above. Any penalties or additional expenses incurred as a result of work outside of these hours will be deemed a Company Charge as defined below unless such alteration is necessitated due to a material default by WTI.

III. PRODUCER WILL PROVIDE: Preducer will provide (or cause to be provided) the following in connection with the Show at the Building, at Producer's sole cost and expense (except as otherwise noted below):

- A. A fully produced, Actor's Equity ("AE") compliant Show including the Show concept, staging, choreography, scenic design, costume design, script and existing Show physical elements (i.e., scenery/sets, props and costumes).
- B. the right and license to use of the tradenames and tradenarks "ELF The Broadway Musical" and associated logos and designs, Show imagery and cast member names and images (collectively, "ELF Marks") in connection with the advertising, marketing, promotion and presentation of the Show at the Premises as to which Producer represents and warrants that it has the right to provide to WTI hereunder.
- C. Funding of the Show mount, production and operating costs (except as otherwise set forth herein).
- D. The engagement of the east for the Show in compliance with all applicable AB rules and requirements. From time-to-time during the Term, Producet will provide members of the Show east or additional hired promotional cast for promotional appearances, the cost for which shall be part of the Show marketing budget ("Marketing Budget") to be funded by WTI (unless such costs are covered by a third party).

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- E. Encopt as set forth in Section IV G below; The engagement of all musicians (collectively, "Musicians") for the Show (in compliance with all applicable local union requirements as required). WII shall not be required to enter into any collective bargaining or other agreement in connection with the Musicians or otherwise in connection with the Show. Producer will furnish (at its sole cost and expense and not a Show Expense) viable charts for the parts to be played by the Musicians. For clarification, there are eight (3) Musicians and one (1) conductor who perform the Show assis. Producer will provide three (3) Musicians and the one (1) conductor, at Producer's sole cost and expense. The remaining WII will reimburse Producer for the costs of five (5) Musicians will be hired locally by Producer as a Local Documented Expense as set forth in Section IV G below. (in compliance with all applicable local union requirements).
- F. Applicable music performance rights fees for Show music (which may be paid to the applicable performing rights society directly by Producer) and any other music rights fees required for the Show music and any associated advertising and marketing.
- G. Provision of templates for marketing materials for WII's use (under section IV(D) below), for advertisements (including print, television, radio, electronic/computer media, outdoor displays, billboards and direct mail), brochures, artwork and promotion and publicity materials in connection with the Show, as well as consultation and assistance with respect to marketing plans, group sales, advertising, public relations and publicity, all of which shall be administered and implemented by WII. All such materials implemented and/or placed by WII as of the date of execution hereof are hereby deemed approved by Producer. Thereafter, Producer will have the right to pre-approve (not to be unreasonably withheld, delayed or conditioned), the style/form of any ELF Marks contained in any templates; provided, however, that once the style/form of the RLF Marks has been approved by Producer, WII will not be required to seek future approvals for further uses.
- H. Insurance for all "Losses" (as defined in section XIII. A. below) arising in connection with the Event and use of the Building for the Event, and the full indemnity, hold hamiless and defense of WTI in connection with any such Losses as set forth in subsection XIII. A. below.
- IV. WTI WILL PROVIDE: WTI will provide (or cause to be provided) the following items in connection with the Show at the Premises, the costs for which will be deemed "Show Expenses" (as defined below):
- A. Use of the Premises for which WTI will receive payment of the "Fixed Building Expenses," as such term is herein defined (in section V. A. 4, below).
- B. "Front-of-House Labor" (i.e., ushers, tickets takers and other front-of-house personnel; cleaning/maintenance crew; security personnel; venue management; public relations/marketing personnel; and box office personnel) for the operation of the Premises during the Use Period, in a number sufficient, in WTPs solo, reasonable, business discretion, to satisfy the normal requirements for events of this nature, payment for which is included in the amount of Fixed Building Expenses.
- C. "Local Back of House Labor" (i.e., the production labor including stagehands, Teamsters, wardrobe and hair labor to be provided by WTI during the Use Period, in a number sufficient, in WTI's reasonable, business discretion in consultation with WTI and as mandated under any applicable collective bargaining agreements to satisfy the normal requirements for

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events of this nature) for which WTI will be paid "Local Back-of-House Labor Expenses" (as defined in section V. A. 4 below). The Local Back of House Labor will be provided during loadin, load-out, performances, continuity calls prior to a performance (not to be held more than 1.5 hours before advertised curtain time) and one rehearsal/sound check immediately prior to the first public performance only. Stagehands and/or teamsters as applicable will also be provided for strip and restore, mopping, truck loading/unloading (during load-in and load-out), spotting calls), subject to the following:

- Any required stagehands and teamsters for rehearsals (after the first public performance) or for work calls (including any overtime charges in connection with the foregoing) will be a Company Charge (not Local Documented Expenses) unless such calls are necessitated by a material malfunction in venue systems not attributable to or caused by Producer.
- 2. Unless necessitated by material malfunction in venue systems not attributable to or caused by Producer. Any any wordrobe and hair labor provided for so called "Daywork", rehearsals after the first public performance and/or work calls will be a Company Charge (including an associated overtime charges) and not Local Documented Expenses. "Daywork" includes any wardrobe and hair labor provided for any calls following the conclusion of a performance, and laundry or maintenance calls during the load-in, prior to, during and/or after a Show performance, and/or during load-out, as well as any rehearsal calls following the first performance.
- 3. Any actual cost or expense associated with Americans with Disabilities Act requirements for the Engagement (i.e., signed performances for the hearing impaired, audio described performances, or captioning) will be a Local Documented Expense; provided that, WTI will have no obligation to make any permanent or semi-permanent renovations or modifications to the Building (e.g., ramps, elevators, etc.). Additionally, if an ADA interpreter or other ADA-related labor is required by law but not available locally, associated travel expenses for such labors shall be deemed a Local Documented Expense. Producer will make best efforts to cooperate with WTI and Building with respect to any disability-related services provided during a performance. If ADA compliance is not required by law for the Engagement, any expenses incurred by WTI for any such services requested by Producer will be a Company Charge.
- D. Advertising and marketing including implementation of the Marketing Budget (inclusive of marketing plans, media placement, "Group Sales", "Subscription Series" (as such terms are defined below), advertising, public relations and publicity for the Show). WTI will enter into agreements for Show marketing and media buys and produce the necessary marketing materials using the templates to be provided by Producer. WTI shall receive a "Group Sales Commission" in connection with the sale of tickets to the Show to groups of ten (10) or more ("Group Sales") and a "Subscription/Member Commission" in connection with the sale of tickets to Citi Performing Arts Center members/series subscribers ("Subscription Series") at the Building (as such terms are defined in section V.A. below).
- E. Advance ticket sales services through the Building box office (the "Box Office") including the set-up/operation of the box office and all related box office services and personnel

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for the sale of tickets to the Show from the on sale date through the last performance of the Show during the Term when the Box Office is open.

- F. Available technical facilities and production equipment in the Premises, including house PA sound and theater lighting, house soft goods, Internet/telephone lines and local telephone service. Any charges for requirements or items arising as result of Producer's work calls and rehearsals after the first public performance of the Show, including but not limited to, additional equipment rental, (e.g., shop usage and shop equipment, compressed gas, paint, tape, stage flooring, hemp, talent requirements) and runners, will be a Company Charge unless the parties mutually agree in writing prior to the commencement of the Engagement that any associated charges be considered Local Documented Expenses or unless necessitated by material mallimetions in venus asstems not auruhundable to cause by Producer. In the case of goods or services rented or purchased from a third party, WTI will charge the Producer the actual cost. Consistent with Building specifications and requirements, WTI will use commercially reasonable efforts to accommodate the requirements set forth in Producer's Technical Rider in order for smooth and efficient presentation of the Show at the Building.
- G. Reimbursement of Producer for the associated charges for engaging the five (5)
 Musicians to augment the Musicians travelling with the Show ("Musicians Costs") as a Local
 Documented Expense. The amount of the Musician Costs will be subject to WII's prior written
 approval which shall not be unreasonably withheld.

V. FINANCIAL TERMS/PAYMENTS/SETTLEMENT:

A. <u>Definitions:</u>

- "Gross Box Office Revenue" ("GBOR") shall mean all revenue inclusive
 of all applicable taxes and Facility Charges derived from the sale of tickets to the Show at the
 Premises from any source whatsoever less any returns or refunds.
- 2. "Net Adjusted Gross Box Office Revenue" ("NAGBOR") shall mean the sum of Gross Box Office Revenue less "Ticket Deductions". "Adjusted Net Ticket Revenue" shall mean GBOR less the Ticket Deductions, excluding the Ticket Deductions in subsections 3 (d) and (e).
- 3. "Ticket Deductions" shall mean the total of the items listed below to be deducted from the Gross Box Office Revenue to arrive at Net Ticket Revenue. All Ticket Deductions will be remined by WTI (except as set forth in subsections 3(f) through 3(i) below) for its sole account (as between the parties hereto) at each weekly Preliminary Settlement.
 - Any applicable taxes on ticket revenue.
 - The "Facility Charge" herein defined as the per paid ticket amount of \$3.75 (included in the established price of each ticket).
 - c. Ticketmaster service charges/fees as applicable.
 - d. The "Group Sales Commission" herein defined as a fixed commission of ten (10%) percent of Net Adjusted Gross Box Office Revenue derived

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from Group Sales tickets for the Show performances which shall be inclusive of any other Ticket Commissions payable to third parties and Ticketmaster service charges/fees in connection with all Group Sales of tickets to the Show.

- e. The "Subscription/Member Commission" herein defined as a fixed commission of twelve (12%) percent of Net Adjusted Gross Box Office Revenue derived from the sale of tickets for the Show performances which are included in the Subscription Series which shall be inclusive of any other Ticket Commissions payable to third parties and Ticketmaster service charges/fees in connection with all Subscription/Member tickets sold to the Show.
- f. "Credit Card Commission(s)" herein defined as a five (5%) percent commission inclusive of processing or service fees charged by or payable to credit card companies in connection with the purchase of tickets through the Ticketmaster System ("Ticketmaster") to be retained by WTI for its sole account (as between the parties hereto). Credit Card Commissions will be assessed on all tickets purchased whether over the internet, at outlets, by phones and/or any other method of remote or automated ticket distribution and/or at the Box Office (inclusive of the Group Sales Commission and/or the Subscription/Member Commission where applicable, (i.e. any ticket sold through WTI's Group Sales or Subscription/Member department for which the Group Sales Commission or Subscription/Member Commission is charged shall not be assessed a separate Credit Card Commission).
- g. The "Flash Sales Commission" shall mean the applicable commissions on Adjusted Net Ticket Revenue derived from the sale of Show tickets through a flash provider e.g., on Groupon or Living Social's websites ("Flash Sales"). This commission will cover any Credit Card Charges payable to third parties and all marketing Flash Sales expense, in connection with the sale of tickets to the Show. The Flash Sales Commission shall be paid to the applicable Flash Sales provider in accordance with the terms of the applicable agreement.
- h. "Discounts" shall mean the applicable discounts and/or rebates on tickets prices based on the particular performance date and time and the specific group purchasing the tickets as set forth in Schedule A.

4. "Show Expenses" shall mean the sum of all the costs to the Show as set forth in this Subparagraph V.A.4 below, which shall be deducted from the available. Net Adjusted Gross Box Office Revenue to arrive at "Net Ticket Revenue" (as defined below). The amount of the applicable Show Expense will be paid/reimbursed to WTI (or retained by WTI out of NAGBOR) or paid to Producer if so noted below at the time of each weekly Preliminary Settlement. The estimates set forth herein are based on Producer's representations to WTI that Show performances will not exceed 2 hours 20 minutes in length (inclusive of intermission). Should performance length change or if Producer otherwise changes production requirements, then the above estimates may increase. The parties shall adjust and reconcile any such estimated

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amounts against the actual expenses for Fixed Building Expenses/Local Back-of-House Labor at Preliminary Settlement.

- a. "Fixed Building Expenses" which shall mean the total amount of \$420,000 for the Use Period (or \$140,000 per week) to be paid to WTI in consideration of Producer's use of the Premises and WTI's provision of front-of-house labor (ushers, security and cleaners) at the Premises in connection with the Show. The Fixed Building Expenses will not require documentation for settlement purposes.
- b. "Local Documented Expense(s)" which shall mean the total of the following Show Expenses which shall require documentation for settlement purposes (and reconciled at settlement at actual cost and expense):
 - 1. The Marketing Budget for the Show to be reimbursed to WTI in connection with advertising and promotion for the Show at the Premises, estimated to be approximately \$760,000.
 - "Local Back-of-House Labor Expenses" shall mean all charges and expenses for Local Back-of-House Labor, including without limitation, FICA, workers' compensation, uncomployment insurance and payroll administration fees associated with such Local Back-of-House Labor, all of which shall be staffed as set forth herein in consultation with the Show's Technical Supervisors with WTI's specifications and as mandated under any collective bargaining agreement applicable to the Premises/Building, including, without limitation, all stagehands, teamsters, wardrobe and hair staff and other labor appropriate for load-in, rehearsals, technical reheursals/preparation, performances and load-out of the Show at the Premises, estimated to be approximately \$410,000 for the Use Period. All labor furnished by WTI hereunder shall be subject to any applicable union minimum requirements and shall be paid at such rates as may be specified in applicable agreements and if no such rates shall be so specified, at the prevailing rate of wages, including full reimbursement for WTI's fringe benefit, payroll tax and other labor-related expenses.
 - 3. "Local WTI Operating Expenses" shall mean all expenses incurred by WTI in connection with furnishing various elements, including, but not limited to: catering for cast and crew, the Musicians Costs set forth in Section IV G above, the cost to produce a program ("Program") to be distributed at no charge to Show patrons; equipment rental (spots and backline) from third parties and miscellaneous charges (e.g., fire, police, permits). The total amount of all of the foregoing is estimated to be approximately \$\$85,000 (which will be reconciled at settlement at actual cost) for the Use Period. Local WTI Operating Expenses shall not include, and WTI shall not be required to furnish, any personnel, services, equipment or materials that are to be furnished by Producer as set forth herein or are customarily provided by a theatrical producer of a touring show, all of which shall Producer's sole responsibility.
 - 4. "Overtime Penalties" shall mean the at actual cost incurred by Producer in connection with overtime penalties for certain production personnel currently

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estimated to be approximately \$4,175 (which will require documentation to be reconciled at settlement), the amount of which WTI will reimburse Producer

- c. The Producer Guarantee (to be paid to Producer as set forth below).
- d. The Producer Royalty (to be paid to Producer as set forth below).
- "Net Ticket Revenue" ("NTR") shall mean any NAGBOR remaining after all Show Expenses have been deducted therefrom and paid to the party entitled to be paid same hereunder.
- "Company Charge(s)" shall mean amounts to be paid by Producer out of any monies payable to it hereunder and not charged to the Show as Local Documented Expenses/Show Expenses or otherwise paid by WTI.

B. Payments to the Parties.

1. Guarantee: Producer Royalty.

a. Producer will be paid a guarantee via wire of \$325,000 per week (the "Guarantee"), payable on or about noon on the day of the first performance of each week licrounder, of the weekly Preliminary Settlements as set forth in section C below (which are anticipated to occur on November 23, 2015 for the first week. November 30, 2015 for the second week and on December 7, 2015 for the third week of the Show Run. Any payments to Producer hereunder are subject to the full execution of this Agreement and Producer's provision of a WTI with a W-9. If there are less than twenty-four (24) performances of the Show during the Show Run ("Performance Deficit"), due to Producer's acts or omissions or a "Force Majeure" resulting in resulting in Producer's inability to perform hereunder, Producer will pay/reimburse to WTI at "Final Settlement" (as defined below) an amount equal to the product of (A) \$40,625 multiplied by (B) the difference between (i) twenty-four (24) and (ii) the number of total performances of the Show that comprised the Engagement Similarly, in the event of a Performance Deficit in any week of the Show Run due to Producer's acts or omissions, MEG-WTI may reduce the amount of the next Installment payable hereunder by \$40,625 per each missed performance ("Per Performance Amount").

b. Producer will receive a royalty of ten (10%) percent ("Producer Royalty") of NAGBOR to be calculated and paid at each weekly Preliminary Settlement for the Show engagement.

- 2. Fixed Building Expenses: Ticket Deductions: Show Expenses. WTI will be paid the aggregate amount of applicable Fixed Building Expenses and all Ticket Deductions (except for any Discounts provided to parons and be paid/reimbursed the total amount of all of its Show Expenses hereunder (pro-rata for each week of the Show Run) at each weekly Preliminary Settlement.
- 3. Split of any NTR. To the extent any NTR remain after all of the above payments have been made to each respective party hereunder, there will be a further financial accounting at Final Settlement where any remaining NTR (i.e., any NAGBOR after deduction of Show Expenses; provided, however, this calculation will be based on the deduction of all Show Expenses) will be split sixty-five (65%) percent to Producer; thirty-five (35%) percent to WTI.
 - 4. If not already otherwise paid to or collected by WTI directly, WTI's share of

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"Net Merchandise Revenues" (both as defined in section VII below) shall also be paid to WTI with the balance paid to Producer at Preliminary Settlement

- All payments due to Producer hereunder are subject to applicable taxes including without limitation, MA withholding taxes (currently 5.15%) and MA corporate excise taxes.
- C. Preliminary Settlement: The parties shall conduct weekly preliminary settlements on the next business day after the final Sunday performance in each week of the Engagement ("Preliminary Settlement") at which time a written preliminary accounting of all Show Expenses (accompanied by settlement documentation) and information on ticket sales will be provided by each respective party (as applicable) with a level of detail satisfactory to the other. At each Preliminary Settlement, the parties shall be reimbursed or paid (as applicable) the amount of Show Expenses under in Sections V. A. and V. B above. For clarification, Producer shall receive Guarantee and Producer Royally. Within thirty (30) days of the end of the Engagement, the parties shall conduct a final settlement for the Show ("Final Settlement") at which time a final accounting of all final Show Expenses (accompanied by settlement, the parties will respectively by paid any sums shown to be due in the Final Accounting (including any amounts due under section V.B.3, above).

VI. SPONSORSHIP:

- A. WII maintains the right to retain all revenues in connection with WII and/or venue sponsors. Citi is a sponsor of the Premises ("Citi Sponsorship") and no other sponsorships will be permitted in the financial services, financial institutions, banking and/or credit/debit card categories. No sponsor revenue from the Citi Sponsorship will be included within Net Sponsorship Profits or payable to Producer hereunder. Producer will not sell any sponsorships for the Show presentation that conflict with the Citi Sponsorship or the existing sponsors at the Building, (e.g., Polar Springs). Subject to any WII or Building sponsor exclusivities or requirements, either party may sell local Show sponsors (or subject to the agreement of the other party, may retain third parties to do so) and retain any net revenue derived therefrom for their respective sole account.
- B. All Event advertising and promotional materials must include the official sponsor of the Citi Performing Arts Wang Theater lock-up logo ("Official Sponsor Logo") to be graphically displayed and otherwise utilized in the manner selected by WTI in its sole discretion. No other Event sponsor logo shall be greater in size or have more prominent positioning than the Official Sponsor Logo.

VII. MERCHANDISE. Producer's designated merchandiser ("Designated Merchandiser") will provide WTI with a first-class program and other souvenirs ("Show Merchandise") to be sold by Producer's vendors at the Premises during performances of the Show in such quantities and at such prices as mutually determined. Designated Merchandiser shall pay to WTI an amount equal to twenty percent (20%) of "Net Merchandise Revenues" (defined below), ten percent (10%) for CDs/DVDs, in connection with Show merchandise following the last performance each week. Such payment will be accompanied by a full accounting of all items sold during the week. The term "Net Merchandise Revenues" as used herein shall mean the entire proceeds derived from the sale or distribution of Show Merchandise at the Building, less all Federal, state and local taxes thereon and applicable credit card charges (credit card charges capped at 5%). Designated Merchandiser will be solely responsible for submitting MA Sales Tax collected on Show

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Merchandise sales and must furnish WII with a copy of its MA ST-1 Sales and Use Tax Registration certificate.

VIII. SHOW SCHEDULE/SEATING REQUIRMENTS

- A. The ticket prices (exclusive of the Facility Charge) and scaling for the Engagement have been mutually determined and are set forth in Schedule A attached hereto and incorporated herein.
- B. Each party hereto shall be entitled to 240 (P1) complimentary tickets over the run of the Show Engagement; provided that an additional number of complimentary tickets may be available in a party (to meet its contractual obligations to sponsors and other third parties as applicable), subject to the prior reasonable approval of the other party. The following complimentary tickets will also be allotted over the entire Show Run: press- 338 (P1); and marketing and promotion- 240 (P1), 880 (P2), 880 (P3), 660 (P4) and 660 (P5). Any complimentary tickets not used by Producer or WTI shall be returned to the Box Office reasonably in advance of the applicable Show performance for sale to the general public. Both parties will make best offeres to limit complimentary tickets to non-weekend performances.
- C. WTI shall hold one hundred forty (140) house seats for WTI and/or its designee's use. Seventy (70) of such seats shall remain available for WTI's use until 72 hours before curtain time at which time they will be released for sale to the general public with Seventy (70) seats remaining available until 24 hours before curtain time.
- D. WTI shall have the further right to reserve seats for the Event for purchase by Citi ("Citi") customers at full price through customary ticket distribution channels commencing prior to, on or after the date that tickets for the Event are made available for sale to the general public (together, the "Sponsor Tickets"). The number and location of the Sponsor Tickets shall be determined pursuant to the existing sponsorship agreements between WTI and Citi (the "Sponsor Agreement"). In the event that the Sponsor Tickets are not purchased by Citi customers they will be made available to WTI's Box Office for sale to the general public pursuant to the schedule provided under the Sponsor Agreement. Citi is the exclusive credit/debit card/banking/financial services and planning/investment banking sponsor of the Premises/Building. Neither Producer, nor its agents, sponsors or designees shall reserve, allocate, offer or use any consignment or other tickets to the Show for the purpose of any VIP package, special or exclusive program, sponsorship or promotion or other arrangement that grants consumers access to such tickets with the use of any credit card that competes with Citi (other than as a normal purchase of an Event ticket from Ticketmaster or the Building's box office).
- IX. NON-COMPETE: Producer represents and warrants, that the Show will not be performed within a 60 mile radius of the Building (the "Territory") during the period commencing 90 days before the first day of the Engagement and ending 90 days after the last day of the Engagement. The preceding clause shall not be precedent setting.
- X. BILLING/CREDITS: The parties shall determine their respective credits/billing for the Show in the Program, Credits are to be included in the Program for both WTI executive and production staff and Producer's staff, as well as other Show material and information that will be provided by Producer.



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XI. EXPLOITATION: Producer shall not have any right to reproduce or record the Show, or licensed or authorize others to transmit, reproduce or exploit the Show either live or through any means of electronic media distribution, (including without limitation, broadcast, cable or other television transmission, videotape, DVD, sound recording, film, on-line, streaming or by any other means) whether now known or hereafter developed, at or from the Premises, absent WIT's prior written approval.

XII. REPRESENTATIONS AND WARRANTIES:

WTI represents and warrants to Producer that:

- It is a duly organized corporation, validly existing, and in good standing under the laws of the State of Massachusetts;
- No provision of its parinership agreement, or any other agreement, instrument or understanding to which it is a party, or by which it is bound, has been or will be violated by its execution and performance of this Agreement;
- 3. This Agreement has been duly executed and delivered by it, and this Agreement is its legal, valid and binding obligation and is enforceable against it in accordance with its terms (except insofar as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, or similar laws affecting creditors rights generally, and except as to the availability of equitable remedies); and

Producer represents and warrants to WTI that:

- It is a duly organized corporation, validly existing and in good standing under the laws of the State of Maryland;
- No provision of its Articles of Incorporation, or By-Laws, or any agreement, instrument or understanding to which it is a party or by which it is bound, has been or will be violated by its execution and performance of this Agreement;
- 3. This Agreement has been duly executed and delivered by it, and this Agreement is its legal, valid and binding obligation and is enforceable against it in accordance with its terms (except insofar as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and except as to the availability of equitable remedies);

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- 4. The intellectual property contained in the Show is or will be owned, licensed or controlled by Producer and use thereof in accordance with the terms and conditions of this Agreement will not violate the rights of any person or entity.
- 5. Producer has timely secured all rights necessary to produce, present, advertise and/or market the Show and that at no time during the Use Period will the Show or any of Producer's activities in connection therewith violate or infringe upon the rights of any third parties. Such rights include (i) all necessary rights for WIP's use of the tradename/trademark, "ELF The Broadway Musicai", associated Show logos and designs, and names, pictures, names, images and likenesses of the Show and all persons appearing in the Show in connection with advertising, marketing, promotion and presentation of the Show at the Premises have been obtained by Producer; and (ii) WII's use thereof for this purpose will not violate or infringe upon any rights of any party.

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XIII. INDEMNITY:

- Producer will indermify, defend and hold harmless Wang Theatre, Inc., The Wang Center for the Performing Arts, Inc., New England Medical Center Hospitals Inc., NEMC Real Estate Company, Inc., MSG Holdings, L.P., The Madison Square Garden Company, MSG Boston Theatrical, LLC., and, their owners, partners and respective parent and affiliated entities, whether direct or indirect, and all directors, officers, employees, agents, licensees, contractors, and successors and assigns of any of the foregoing (collectively, the "Affiliates"), from and against any and all claims, liabilities, losses, damages, judgments, settlement expenses, costs and expenses whatsoever (including court costs, afformeys' fees and related disbursements, whether incurred by WII in actions involving third parties or in actions against Producer for claims under this Agreement) (individually, a "Loss" and collectively, the "Losses") arising out of or in connection with: (i) the breach by Producer of any of its agreements or covenants under this Agreement; (ii) the untruth of any of its representations and warranties hereunder; (iii) the conduct and presentation of the Show/Event including any preparation for or move in or move out of the Event, any hospitality function, reception, promotional event or similar event hosted by Producer or any talent appearing in the Event; and/or any sound recording, filming/videotoping, telecasting or other media exploitation of the Event (if so authorized by WTI); and (iv) the use of the Building or the Premises, or any part thereof, in connection with the Event including, but not limited to, areas utilized by guests attending the Event, box office areas, escalators, elevators, stairs, seating areas, lavatories, restaurant and concession areas and all areas and facilities utilized for ingress and egress of guests.
- B. Without limiting the provisions of subparagraph (c) above, Producer will defend, indemnify, and hold harmless WII and the Affiliates for any damage to the property (whether in or about the Premises/Building) of WII, the Affiliates or any third party during the Use Period whether caused by Event participants, production personnel, patrons or otherwise. All repairs to the damaged property of WII will be made by firm(s) designated by WII. The charges for such services will not exceed the charges generally prevailing for comparable services.

XIV. INSURANCE.

- A. Requirements: In connection with the Event, Producer will obtain and maintain the following insurance with insurance companies licensed to do business in the State of Massachusetts and with a minimum of an "A" rating in the current edition of Best's Insurance Guide:
- (including coverage for personal and bodily injury, third party property liability coverage, blanket contractual liability, liquor liability, host liquor liability, products/completed operations and non-owned/hired automobile liability), which covers WTI, the Affiliates, Producer and each of their respective directors, officers, employees, agents, licensees, contractors and successors and assigns in a minimum combined single limit of liability of Five Million Dollars (\$5,000,000) for personal and bodily injuries to (or the death of), or property damage sustained by, one or more persons in any one occurrence arising out of, or in connection with, the Event and/or the use of the Premises or the Building, or any part thereof during the Use Period; and
- (2) Other Insurance, Workers' Compensation Insurance, Employer's Liability Insurance and all other insurance coverage of similar character applicable, or relating to, the employment of Producer's officers, directors, employees, servants, agents and independent contractors, with limits as required by law.

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B. Pyrotechnics and Special Effects Insurance. With respect to the use of any and all laser and/or pyrotechnic devices or special effects approved by WTI hereunder, Producer will ensure that (i) Producer's insurance policy covering the Event will not contain an exclusion for pyrotechnics, explosives and/or confeiti drops or other special effects; and (ii) the person(s) supervising and conducting any display of pyrotechnics, explosives or special effects will be licensed professional in compliance with Law with a Commercial General Liability insurance policy in minimum limits of Five Million Dollars (35,000,000) per occurrence specifically endersed to include coverage for such activities naming WTI and its Affiliates as additional insureds and loss payees as their interests appear under such policy.

C. Certificates:

- (1) Certificates evidencing all insurance required hereunder will be delivered to WTI by Producer at least thirty (30) days in advance of the first day of the Use Period. The certificate evidencing the Commercial General Liability Coverage will expressly state that the policy includes blanket contractual liability coverage and name Wang Theatre, Inc., as the certificate holder. If such certificates are not delivered to WTI by the date required, in a form and from an insurer satisfactory to WTI, WTI will be entitled to treat such failure as a material breach of this Agreement. In such case, WTI, at the sole cost and expense of Producer, will have the right, but not the obligation, to purchase the Commercial General Liability Coverage and/or Property Damago Coverage required hereunder to protect the interests of the additional insureds set forth in clause XIV.C.(2) below. WTTs failure to purchase said insurance coverage, in whole or in part, will not give rise to any claim or defense by Producer against WTI, and will not relieve Producer of any of its obligations under this Agreement.
- (2) Certificates of insurance evidencing the insurance required under this Agreement (excepting Workers' Compensation Insurance) will contain the following endorsement:
- "Additional Insureds: Wang Theatre, Inc., The Wang Center for the Performing Arts, Inc., New England Medical Center Hospitals Inc., NEMC Real Estate Company, Inc., MSG Holdings, L.P., The Madison Square Garden Company, MSG Boston Theatrical, LLC., their owners, and partners and all of their respective parent and affiliated entities, whether direct or indirect, and all directors, officers, employees, agents, licensees, contractors and successors and assigns of any of the foregoing. Such coverage will be primary for all purposes, without any right of contribution and contain a waiver of subrogation in favor of WTL"
- (3) The policy will have no deductible or self-insured retention unless approved by WTI prior to the Event.
- (4) All certificates of insurance will provide that such policies may not be cancelled or modified in any manner upon less than thirty (30) days prior written notice to WTI. For an Accord or similar certificate, the words "endeavor to" and "but failure to mail such notices will not impose any obligation or liability of any kind on upon the company, its agents or representatives" must be crossed out of the cancellation clause on each certificate of insurance. No certificate will be accepted with a disclaimer provision stating that coverage is not conferred on the Additional Insureds absent a special endorsement (unless such endorsement is provided with the certificate).
- (5) The limitations of liability required hereunder will be on a "per event" basis (rather than an annual aggregate).

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D. The indemnity set forth in Subparagraph XVI. A, above shall include injury or death of any employee, agent, contractor or subcontractor of Producer or WTI, or patron of the Building, and shall not be limited in any way by any amount or type of damages, compensation or benefits payable under any applicable Workers Compensation, Disability Benefits or other similar employee benefits acts and shall survive expiration of the Term of this Agreement.

XV. TERMINATION:

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- A. This Agreement may be reminated by either party effective upon receipt of written notice if (a) the other party becomes bankrupt or files for protection under the bankruptcy laws or in similar circumstances including the filing of a voluntary or involuntary petition in bankruptcy by or against a party to this Agreement, whether for the purpose of reorganization or otherwise (unless such petition is discharged within 60 days of such filing), the admission of such party of its inability to pay its debts generally as they become due, such party's general assignment for the benefit of its creditors or the appointment of a receiver or trustee for such party or its property or such party otherwise takes the benefit of any insolvency act, or (b) the other party fails to perform any material term or condition of this Agreement and does not cure such failure within 10 days of written notice to cure by the non-breaching party.
- B. No termination of this Agreement shall be deemed to limit any other rights or remedies, at law and in equity, otherwise available to the parties.
- XVI. STANDARD TERMS AND CONDITIONS. Annexed hereto are WII's Standard Terms and Conditions (the "Standard Terms and Conditions") which are incorporated herein by reference. In the event of any inconsistency between the terms and conditions contained herein and such Standard Terms and Conditions, the provisions contained herein shall prevail. Producer acknowledges that it has read and understands the Standard Terms and Conditions.

XVII APPLICABLE LAW; GOVERNING LAW/JURISDICTION: This Agreement shall be construed in accordance with and governed by the laws of the State of Massacusetts without regard to its conflicts of laws decisions. Any litigation, action or proceeding arising out of or relating to this Agreement shall be instituted in any state or federal court located within the City of Boston and the parties hereby submit to the sole and exclusive jurisdiction of any such court in any such litigation, action or proceeding.

XVIII. CONFIDENTIALITY; NON-DISCLOSURE: Each of WTI and Producer represents and warrants to the other that, except as specifically authorized by one party to the other in writing, information and other data developed or acquired by or furnished in the performance of this Agreement shall be used only in connection with services provided to said party. Each party agrees that all materials and any and all matters concerning the other learned during the course of its services hereunder, as well as the terms and conditions of this Agreement, are trade secrets or are otherwise proprietary or confidential and are not to be disclosed, disseminated or otherwise revealed, in whole or in part, in any manner whatsoever, either during or after the Term of this Agreement, to anyone other than its attorneys, accountants or employees on a need-to-know basis, providing such persons treat such matters as confidential in accordance with this section or if compelled by valid legal process with notice to the other party and an opportunity to obtain a protective order if available,

IXX. RELATIONSHIP OF PARTIES: Each party to this Agreement is an independent contractor

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and not an agent, partner or joint venturer of the other. Neither party has the apparent or implied authority to do any of the following:

- A. Pledge the credit of the other or any of its employees;
- B. Bind the other under any contract, agreement, note, mortgage or other obligation;
- C. Release or discharge my debt due the other; or

Sell, mortgage, transfer or otherwise dispose of any assets of the other.

XX. NOTICES: All notices required or permitted by this Agreement to be given to a party shall be in writing and shall be delivered personally or sent by certified or registered mail, return receipt requested, or by overnight courier or telecopied to the party concerned at its address as set forth below or telecopier numbers provided during the Term. Mailed notice shall be deemed to have been given 3 business days after being deposited in the United States mail. Notices sent by overnight courier shall be deemed received one day after being delivered to the overnight courier services for next day delivery. Notices sent by telecopier shall be deemed received in accordance with a confirmation so indicating.

All notices to Producer shall be addressed to:

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Altiworks Presentations, LLCSparkle Jolly Touring, LLC 7135 Minstrel Way, Ste 105

Columbia, MD 21045

Attn: Chammine MeVieler Angela Rowles

Vice President of Business Development

All notices to WTI shall be addressed to:

WTI c/o 270 Tremont Street Boston, MA 02116 Attention: Michael Szczepkowski Vice President & General Manager

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With a copy to:

MSG Entertainment Holdings 11.C-L-P. 2 Penn Plaza - 16th Floor New York, NY 10121 Attention: Josephine Vaccarello Vice President

and

Legal and Business Affairs

MSG Entertainment Holdings, L.LCL.P.

2 Penn Plaza - 19th Floor New York, NY 10121

Attn: Denise Rubin-Carter

Vice President, Business Legal Affairs

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XXI. NO ASSIGNMENT OF AGREEMENT AND SALE OF THE BUILDING Neither party to this Agreement may assign its rights or obligations hereunder without the prior written consent of the other party except that WTI may assign its rights and obligations to any entity that is controlled by or under common control with it, or to any entity acquiring all or substantially all of its stock or assets.

XXII. FORCE MAJEURE: In the event that fire, flood, earthquake, strike, labor dispute, riot, civil commotion or emergency, war, terrorist act (or related security or safety concerns), extreme failure of electrical utilities or transportation or any other event beyond WTI's reasonable control ("Force Majeure Byent") interferes with the load-in/load-out, rehearsals for and/or the Show Run at the Premises, WTI shall not have any liability to the Producer for damages; provided however, that the parties will make best efforts to resolve whatever problems were caused by the Force Majeure Event in accordance with their respective obligations hereunder. Notwithstanding any Force Majeure Event, WTI shall be reimbursed for the Show Expenses incurred by (or owed to) WTI and each party shall be paid its respective monies, share of Net Ticket Revenue, Net Sponsorship Profits and Net Marchandise Revenues earned by it under section V.B hereunder up until the time of the Force Majeure Event, and thereafter in connection with the resumption of the Show Run (if interrupted due to the Force Majeure Event).

XXIV. PARAGRAPH TITLES: The head notes and capitalization contained in this Agreement are for convenience only and are not intended in any way to define or limit the construction or interpretation of any section of this Agreement.

XXV. COOPERATION AND APPROVALS: Each party agrees to use best efforts to cooperate and consult with the other party in an effort to speedily and amicably resolve any unforescendifficulties or problems not covered by this Agreement.

XXVI. NO WAIVER: The failure of WTI or Producer to insist on the other party's strict compliance with the terms and conditions in this Agreement shall not constitute a waiver of WTI's and Producer's right to insist that the other party in the future strictly comply with any and all of the terms and conditions contained in this Agreement.

XXVII. REMEDIES CUMULATIVE: All remedies, rights, undertakings, obligations and agreements contained in this Agreement shall be cumulative, and none of them shall be in limitation of any other remedy, right, undertaking, obligation or agreement of any party.

XXVIII. SEVERABILITY: If any clause or provision of this Agreement shall be held to be invalid or unenforceable, such clause or provision shall be construed and enforced as if it has been more narrowly drawn so as not to be invalid or unenforceable and such invalidity or unenforceable and such invalidity or unenforceable any other clause or provision of this Agreement.

XIX. ENTIRE AGREEMENT: This document contains the entire agreement and understanding between the parties relating to the contents hereof and supersedes all prior agreements between the parties. This Agreement may not be altered, amended, modified, or otherwise changed, nor may any of the terms hereof be waived, except by an instrument in writing signed by both parties. Facsimile signatures herein shall be deemed originals for all purposes. This document may be signed in one or more counterparts, each of which shall be deemed an original, and all of which together shall be deemed to be one and the same document,

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We look forward to working with you on this exciting project, and anticipate a mutually successful relationship.

VP & General Manager AGREED AND ACCEPTED:

NETWORKS PRESENTATIONS, LLCSPARKLE JOLLY TOURING, LLC

Angela Paula Authorized Signatury Angela Rowles Vice President of

Business Development

STANDARD TERMS AND CONDITIONS - CONCERTS/SHOWS

COMPLIANCE WITH LEGAL REQUIREMENTS.

- A. Producer (including, without limitation Producer's employees, contractors and all other persons under its authority) will comply with all applicable laws, orders, ordinances and regulations and with any lawful direction of public officers relating to the Show, the Engagement, the Building and its use and occupancy hereunder.
- B. Producer will be solely responsible for the discharge of all of Producer's obligations under all applicable law, with respect to Producer's employees and contractors, including, without limitation, in connection with tax withholdings (domestic and foreign, if applicable) workers compensation and disability insurance.
- C. Producer will comply with WIT's obligations to its sponsors in connection with activities in the Building and Producer will not do anything contrary to or inconsistent with such obligations. Absent WIT's prior written approval, no signage or other element of an Artist/Producer sponsor may be displayed at the Building.
- D. In the event any minor is scheduled to appear, Producer will comply with the applicable provisions of law, including, but not limited to, the Education Law of the State of Massachusetts and any other applicable rules or regulations. Producer shall supply WII with copies of valid Massachusetts working papers for such minors prior to the Show. Otherwise, minors are not permitted in the non-public areas of the Wang Theatre without the prior written permission of WII and appropriate supervision.
- E. In accordance with law, smoking is prohibited throughout the entire Building. Anyone violating this rule will be subject to removal from the Building by WTP a security.

II. COMPLIANCE WITH WIT SECURITY AND OTHER RULES.

- A. As between the parties, any and all security requirements or problems will be brought to the attention of, and will be subject to the ultimate authority and control of WTI's security personnel. It is hereby understood and agreed that WTI, in its solo discretion, shall be entitled to utilize special security equipment anywhere in the Building, including, but not limited to, any extrances to be utilized by the public or Producer or its employees, agents or backstage guests and shall make restorable, compared all offers to inform and instruct Producer's representation and additional security protocol or requirement. In any such case, all costs and expenses incurred in connection therewith shall be Show Expenses.
- B. Producer, its agents, employees, patrons and guests will abide by WTI's rules and regulations for the use, occupancy and operation of the Building. Anyone employed by Producer will be under the general supervision of WTI (but not as an agent or employee of WTI). Producer agrees that any security personnel provided by Producer will not interact with patrons of WTI. Only WTI may remove any person it deems to be undesirable or disorderly from the Building. WTI security has the sole right, in its discretion, to take any steps to prevent injury to persons or damage to properly in and around the Building. Producer agrees to notify WTI's Director of Security in advance of the Show if any performents intend to enter the sudience area during performances.
- C. No weapons of any kind or nature will be permitted to be brought into the Building and WTI shall have the right, in its sole discretion, to request an advance weapon check for any person entering the Building. Any person found carrying a weapon will not be permitted to enter the Building.
- D. In no event shall Producer, or any designee, employee or independent contractor of Producer, take any action or fail to take any action in connection with the Show that would or might interfere with or deleteriously affect any existing union jurisdictional arrangement relating to the Premises, the Building or otherwise interfere with or deleteriously affect the regular business operations of WTL.
- Producer acknowledges and agrees that all of Producer's, Artist's and their respective employees, contractors' and/or agents' personal property, including, without limitation, Artist's instruments and equipment brought or permitted by Producer into the Building will be at Producer's sole risk. WTI will not be liable to any party for any loss of or damage to such property

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- F. The parties will coordinate the number of backstage passes and limit access to the entrance designated by WTI. WIT's security will remove any person from the backstage areas in the interest of order, quiet or safety. Producer's guests will have tickets and be seated in the auditorium or in another area designated by WTI (e.g., a green room). Only persons directly involved with the production or who have been cleared by WTI will be permitted backstage.
- G. Producer acknowledges that on-site emergency medical technicians and stand-by ambulance services may be furnished at the Show by such party as may be contractually authorized by WTI to satisfy its requirements with respect to such services. Any other vendors desired by Producer for such services must be approved in writing by WTI.
- III. PRODUCER'S RESPONSIBILITIES IN CONNECTION WITH THE SHOW. In accordance with applicable rules and regulations, Producer must comply with the following:
- A. Producer understands and agrees that the sound level limit for the Theater is 105 dbs, measured on the A-weighted scale at the Theater's rear wall, approximately 110 feet from the stage. Sound levels, excluding applause, will be strictly monitored by the Theater's manager and soundman. If, at any time during a performance, the average sound level during a five-minute period exceeds 105 dbs, WTI shall discuss with Producer and a mutually acceptable resolution will be determined.
 - B. All equipment must be either upstage or downstage of the fire curtain line.
- C. Producer and WTI shall comply with the requirements of all laws, orders, regulations, directives and prescriptions of Federal, state, county and municipal authorities which shall impose any duty upon WII or Producer with respect to the Premises, and Producer shall cause all artists, performers and other participants in the Show to cooperate with WII and Producer with respect to such matters (including, without limitation, any requirement under the Americans with Disabilities Act to provide certain suzuliary aids or services or secess to tickets for purchase by persons with disabilities in connection with the Show). Producer shall comply with all rules, orders, regulations or requirements of any applicable authority and shall not do or permit anything to be done in or about the Premises or the Building or bring or keep anything therein which shall increase the rate of fire insurance on the Building or an property located therein. No gasoline, acetylene or other fuel or combustible will be admitted to the Building without the approval of WTI and the Boston Fire Department ("Fire Department"); provided however, that under no circumstances whatsoever shall propose be admitted to the Building. Any decorating or other work, and the material therefor, done or familished by Producer shall be subject to approval by WTI and the Fire Department and, unless so approved may be prevented or removed by WTL All scenic elements, decorations and other combustible materials must be fire-proofed, and Producer shall deliver to WTI a flame-proofing certificate in the form specified or required by and satisfactory to the Fire Department or any other agency of the City of Boston having jurisdiction with respect thereto or else such elements will not be permitted into the Building. Producer must deliver to WTI, no later than two weeks prior to the load-in: (a) a description of any stage drapery being used for the Show, its placement and use; (b) a twelve inch square sample of each drapery used; and (c) a description of all special effects or open flames including material, description of use, any applicable so-called "material safety data sheets", duration and timing within show. Fabric samples must be able to selfextinguish immediately or not ignite during a three minute torch test. In the event that fire watch or permit re-insting fees are required due to failure of Producer's materials to pass the Fire Department test, or due to Producer's failure to provide samples for testing in a timely fashion, all such fees shall be a Producer Cost. No cut evergreens shall be permitted in the Premises or the Building.
- D. Producer hearby agrees that with respect to the use of any and all laser and pyrotechnic devices to be operated in connection with the presentation of the Show, if any, Producer shall comply with all lawa, rules, regulations, prescriptions, criteria and policies of all Federal, state and local authorities or agencies applicable inereto, including, without limitation, the then current: (i) rules of the Massachusetts State Department of Labor and the Food and Drug Administration Compliance Policy Guide (or any successors thereto); and (ii) rules, regulations and directives of the Fire Department of the City of Bostun. Producer shall deliver all supporting documentation confirming Producer's compliance with the above requirements at least seven (7) days prior to the first performance of the Show. Notwithstanding all of the foregoing, Producer shall not use any laser and/or pyrotechnic devices whatsoever without the prior written consent of WII, which may be withheld within its sole discretion.
- E. There shall not be any solicitation of funds at the Building. In the event any portion of ticket proceeds are to be denated to a charity, Producer shall have the obligation for compliance with all applicable charitable co-venturer requirements and law, including, without limitation, any filing requirements.

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- IV. FRAUDULENT CHARGES. Producer acknowledges that <u>mutually surred upon a portion</u> of the proceeds from the sale of tickets may be held back in order to cover the costs related to chargebacks for fraudulent credit card sales or damages arising from any credit card sales that occur following the Preliminary Settlement to be reconciled at the Final Settlement. Producer and WTI agree that they each shall be liable for and each of them indemnifies and holds harmless Ticketmaster, the other party and their respective affiliates from and against fifty percent (50%) of any lost revenues, chargebacks or damages arising from any credit card sales that occur following the settlement of the Show.
- V. REPRESENTATIVES/COORDINATION OF PRODUCTION. Producer confirms that it has designated to WTI in writing Producer's representative with authority to act for Producer in coordinating preparation for the Show with representatives of WTI. Producer represent that such designee will have the full authority to make any production or business decisions in regard to the Show on Producer's behalf. WTI will not be liable if Producer does not have Producer's designee available and such unavailability results in a delay or stoppage of work on the Show due to Producer's inability to make business or production decisions or authorize the expenditure of monies.
- VI. WTI'S TRADEMARKS AND DESIGNS. The words "Wang Theatre", "Citi Performing Arts Center" and "Wang Theatre Presents" are registered service marks belonging to WTI and/or its affiliates or sponsors (the "Service Marks"). Similarly, WTI's logos, designs and other artwork and images of the Building (collectively, "Designs") are federally protected. No use of the Service Marks or Designs shall appear in any artwork, copy, advertising, or promotional or other materials in any media without WTI's prior written approval in each case for each use. Each such use of any of the Service Marks or Designs shall be followed by the designstion directed by WTI. Producer's right to use the Service Marks and/or Designs after such approval shall be non-assignable, non-transferable and limited by this Agreement.

VII. ADVERTISING/PROMOTIONS/PUBLICITY.

- A. WIT will arrange for all advertising, promotion and publicity for the Show, after consultation with Producer, the costs for which are Show Expenses. Producer has provided or will provide WII with approved copy, names, logos, likenesses, blographics and other materials which WII shall have the right to use in all advertising, promotion and publicity for the Engagement and WII.
- B. Producer agrees that the Show shall be part of a venue sponsored concert series at the Building (the "Show Series"). The Show may also be a "Citi Card Event". Accordingly, all advertising and promotional materials for the Show, Show tickets, WTF's program, press releases and pre-Show, intermission and post-Show announcements in the Building may mention the Show Series. In addition, all advertising and promotion for the Show by the parties in any format/mode will include the Building name and/or logo and WTI website address (at least equal in size and prominence to Producer's website, if contained in such advertising).
- C. Producer hereby authorizes the Show to be included in WTI's complimentary program, club suite brochures and other promotional material, if WTI determines in its sole discretion to distribute same.

VIII. TICKETS AND SEATING.

A. All production kills shall be mutually agreed upon by the parties and shall not be utilized for purposes of complimentary seating. Any party using a production kill seating location for compliment scating shall pay for each such seat at the full price of the paid seat located nearest to such production kill seating. WTI shall hold for itself or persons designated by WTI, at regular prices, 140 hours seats in locations determined by WTI. 70 of such seats shall remain available until 72 hours before curtain time. Producer acknowledges and agrees that there are 157 "Dress Circle" seats at the Building which are off-manifest and will not be included Gross Box Office Receipts.

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- B. Ticket Scaling. Ticket scaling and the ticket prices for the Show will be have been mutually approved and are set subject to the requirements of the Americans with Disabilities Act.
- C. Ticket Purchases, Producer shall have the right to reserve and purchase up to forty (40) seats per performance, 36 on a 48 hour hold, and 4 emergency holds, for the Event for its own use or the use of its designees (exclusive of the complimentary seating reserved for the use of WII or its designee(s) as described in Section VIII of the Agreement). In the event that WII does not use any or all of such seating prior to the Event, it shall be made available to WII's box office for sale to the general public.
 - D. Ticket Refunds. WTI shall have the right to deduct any ticket refunds from

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any monies due Producer hereunder. (c) Licensee acknowledges that WTI may hold back from box office or any other receipts due Licensee hereunder at actitement or otherwise a reasonable amount, determined by mutual agreement of both parties to process and issue patron refunds (as circumstances warrant) consistent with WTI's outomary practices, and procedures from time to time. Licensee further acknowledges that WTI may issue such refunds in the event of equipment failure rendering a performance of the Show impossible, performer not performing equivalent to billing, inclement weather rendering prosecutation studies insied to and from the Building impossible of extremely dangerous or for any other cause reasonably decimed appropriate by WTI.

- B. CITI Tickets. WTI reserves the right, at its sole discretion, to offer the following pre-sale opportunities at full ticket prices prior to the first public sale of tickets to any performances of the Show; 72-hour pre-sale opportunity for members of The Club followed by a 48-hour pre-sale opportunity for Citi Card holders,
- IX. ADA REQUIREMENTS. In compliance with the Americans with Disabilities Act, certain seating identified in the manifest may not be available for sale to the general public.
- X. HOUSE OPERATIONS AND MERCHANDISE.
 - WTI reserves the right to operate all bars and concessions solely for its own account.
- B. All merchandise must be consistent with WTFs customery quality standards and shall be subject to WTF's approval.
- XL NO REPRODUCTION OF THE CONCERT: EXCEPTIONS FOR PRE-APPROVED NEWS/PUBLICITY PURPOSES AND CERTAIN PHOTOGRAPHS,
- A. Producer will not, or make errangements or contract for, or permit others to engage in any recording, broadcasting, televising, filming, taping, downloading, streaming, webcasting, phone casting, transmitting by any other form of electronic media, or any other kind of recording, reproduction or exploitation of whatsoever nature, whether now know or betweather developed, in connection with either the Show or the Building, in the absence of a separatic written agreement signed by all parties hereto and payment to WII of its customary origination fee and all related costs and expenses.
- B. Notwithstanding Paragraph: XII (A), Producer will be permitted to admit approved press photographers and news crews for news and publicity purposes only, provided that Producer advises WII at least forty-cight (48) hours prior to the Show of the identity of such photographers and/or news crews and receives WIPs approval therefor.
- XII. REPRODUCTION OF CONCERT BY WIT.
- A. Producer agrees to allow WII in coordination with Producer to photograph the Show and to use such photographs for WII archival and promotional purposes, subject to Producer's prior reasonable approval.
- B. Producer agrees that WTI in coordination with Producer will have the right to admit its customary number of approved press photographers and/or news crews for news and publicity purposes only.
- XII. RESERVED RIGHTS IN BUILDING. WII and its designees at all times has free access to all parts of the Building. WII reserves and retains the absolute right to erect display advertising in the Building, and to make any announcements in connection with the safety, security, and/or welfare of Show patrons and to make such other announcements in coordination with Producer as it desires, in any manner which does not interfere with the Show.
- XIV. CONDITION OF BUILDING: MAINTENANCE OF BUILDING.
- A. WII makes no representations with respect to the Building. Producer has examined the Building and has concluded that it is in good repair, suitable for Producer's purposes on an "es is/where is" condition.
- B. Producer acknowledges that other parts of the Building may be used during the Term for activities other than the Show. WTI operates a tour which may enter the Auditorium during the Term. WTI will have full authority to establish the schedules for the use and availability of all Building services and facilities in its reasonable, business judgment, and Producer agrees to comply with any schedules and sharing arrangements oo established. Producer will be given advance notice of any sharing arrangements. Building carances and exits will be locked and

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opened as WTI will determine after consultation with Producer. Producer, by Producer's designee, will be present at all times during the Show.

C. Producer shall not mark, paint, drill into or in any way mar or deface any part of the Premises or the Building except lagging, if necessary. Producer shall not install, display or erect any lettering, signs, pictures, notices or advertisements upon any part of the custide or inside of the Building or make any alterations or improvements in or to the Premises or the Building without the prior written consent of WTI. Nothing contained berein shall be deemed to limit or restrict WTI's right to sell and display permanent or non-ovent related nevertising or spousonship signage or elements (including, without limitation, vehicle displays in the Building) in any portion of the Building or event-related signage for events other than the Show.

XV. DEFAULT.

- A. If before or during the Show (i) Producer defaults in the performance or observance of any of Producer's material obligations or agreements contained herein, including cancellation of the Show by Producer for any reason (including, but not limited to Producer's inability to obtain immigration clearance or other immigration problems), not caused by Force Majeure (ii) Producer makes an assignment for the benefit of creditors or takes the benefit of any insolvency act, (iii) a case or proceeding is commenced, or petition filed, by or against Producer under an insolvency act or (iv) Producer vacates or deserts the Building, then, and in any such event, this Agreement, in its entirety will expire fully and completely, effective upon notice to Producer. All of Producer's rights hereunder will case, Producer will quit and surrender the Building to WTI, and Producer will reimburse WTI for the actual amounts paid by WTI or contracted to be paid by WTI as of the date of the default and required to be paid thereafter in connection with the Show, paid and lost profits. Notwithstanding the foregoing, WTI shall retain all its rights and remedies under law or equity or otherwise.
- B. In the event of Producer's breach or investment breach of any of Producer's material obligations hereunder, WTI will have the right of injunction and the right to invoke any remedy allowed at law or in equity or otherwise.
- XVI. END OF TERM. At the end of the Term, Producer immediately will remove all Producers property from the Building and surrender the Building to WTI. The Building will be in clean condition and good order, ordinary wear excepted. Producer agrees to pay any costs resulting from Producer's failure to do so, or from damages to real or personal property belonging to or supplied by WTI, due to Producer's acts or failures to act or due to the acts of Producer's employees and/or independent contractors.

XVII. MISCELLANEOUS.

- A. Consent. No consent, approval or waiver will be deemed granted unless in writing. Consent, approval or waiver may be granted or withheld in the discretion of the party whose consent, approval or waiver is requested.
- B. Invalidity. A determination that any provision of this Agreement, as applied to either party or to any circumstance, is either void or unenforceable will in no way effect any other provision of this Agreement or the validity or enforceability of all other provisions of this Agreement.
- C. Inconsistancy. In the event of any inconsistency between the long-form agreement and these STC, the provisions of the long-form agreement will prevail.

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Boston Musican Payroll for Reimbursement

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	Pension An	\$ 117.99	\$ 102.60		\$ 128.25	\$ 135.43			Pension An	\$ 117.99	\$ 102.60	\$ 135.43	\$ 128.75	\$ 135.43			Pension Am	\$ 121.41	\$ 106.02	\$ 138.85	\$ 131.67		
	Health	\$ 138.00	\$ 138.00	\$ 138.00	\$ 138,00	\$ 138.00			Health	\$ 138.00	\$ 138.00	\$ 138.00	\$ 138.00	\$ 138.00			Health			\$ 138.00	\$ 138,00	\$ 138.00	-
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	PR Tax	\$ 131.96	\$ 114.75	\$ 151.47	\$ 143.44	\$ 151.47			PR Tax	\$ 131,96	\$ 114.75	\$ 151.47	\$ 143.44	\$ 151.47			PR Tax	\$ 131.96	\$ 114.75	\$ 151.47	\$ 143.44	\$ 151,47	
	Doubles	\$ 135.00	٠.	\$ 288.00	\$ 225.00	\$ 288,00			Doubles	135,00	1	288.00	225.00	288.00			Doubles	135.00	•	288.00	225.00	288.00	
	Base Rate	\$ 900.00	\$ 900.00	\$ 900.00	\$ 900,00	\$ 900.00		-	Base Rate D	\$ 900.00	\$ 900.00	\$ 900.00	\$ 900.00	\$ 900.00			Base Rate D	\$ 00.006 \$	\$ 900.00	\$ 00:006 \$	\$ 900.00 \$	\$ 900.000 \$	
	Player	Eric Siereveld	Matt Brown	Ryan Claus	Mike Livingston	Brett Gregory			Player	Eric Stereveld	Matt Brown	Ryan Claus	Mike Livingston	Brett Gregory			Player	Eric Siereveld	Matt Brown	Ryan Claus	Mike Livingston	Brett Gregory	
Week 1	Instrument	Trumpet2/Flugel	Trombone	Reed 1 (flute/picc/clar/alto)	Reed 2 (flute/clar/tenor)	Reed 3 (flute/clar/bass/bari)		Week 2	Instrument	Trumpet2/Flugel	Trombone	Reed 1 (flute/picc/clar/alto)	Reed 2 (flute/clar/tenor)	Reed 3 (flute/clar/bass/bari)		Week 3	Instrument	Trumpet2/Flugel	Trombone	Reed 1 (flute/picc/clar/alto)	Reed 2 (flute/clar/tenor)	Reed 3 (flute/clar/bass/bari)	

\$ 24,129.28 Grand Total





AGREEMENT BETWEEN

BOHV Operations, LLC

AND

BOSTON MUSICIANS' ASSOCIATION AMERICAN FEDERATION OF MUSICIANS LOCAL 9-535

January 1, 2014 - December 31, 2016

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ARTICLE I PRELIMINARIES

AGREEMENT made on this 1st day of April 2014, and entered into at Boston, Massachusetts, by and between BOHV Operations LLC, hereinafter referred to as the "Employer," and the Boston Musicians' Association, Local 9-535, American Federation of Musicians, hereinafter referred to as the "Union."

WITNESSETH: Whereas the parties desire to establish a collective bargaining relationship and to set forth the terms and conditions of employment of Employees (hereinafter referred to as "Musicians") during the term of this Agreement;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained the parties agree as follows:

- 1. During the life of this Agreement, the Union will permit its members to accept employment under the terms and conditions set forth herein.
- 2. The Employer will continue to employ all Musicians required under this Agreement.

ARTICLE II CLASSIFICATION

If a presentation with live music contains more than twenty-five (25) minutes of music, it shall be classified as a "Musical" and subject to the provisions of this Agreement. However, due to the diverse musical patterns of various attractions, the foregoing "classification" shall serve only as a guide and shall not be considered absolute. Any dispute(s) as to classification may be grieved by either party pursuant to ARTICLE XXVI, Grievance and Arbitration.

ARTICLE III WORK WEEK

A workweek shall consist of eight (8) performances within a period of six (6) consecutive days, Monday through Sunday. If there are less than eight (8) performances within a workweek, payment shall be made at the single performance rate. The requirement for consecutive days is waived for the week of Christmas, Thanksgiving, Fourth of July and New Year's Eve or New Year's Day.

A three (3) hour rehearsal or a three (3) hour dress rehearsal may be substituted in lieu of a performance if there are seven (7) performances in an opening week.

Performances in addition to eight (8) per work week or a performance on a seventh consecutive day shall pay one hundred fifty percent (150%) of the pro rata performance rate.

However, if a performance on a seventh (7th) consecutive day occurs within either the first or the last thirteen (13) days of a presentation (but not both), and is attributable to either first or final week scheduling demands, one hundred fifty percent (150%) payment shall not be required. The above proviso can be used only once during each engagement.

ARTICLE IV NUMBERS OF MUSICIANS

Section 1. Non-"Pamphlet B" Staffing

- A. For a Musical presentation that does not employ traveling musicians under the American Federation of Musicians' "Pamphlet B" agreement (hereinafter, "non-Pamphlet B Musical Presentation"), the Employer shall employ the number of Local 9-535 Musicians required by the show (not to include nonplaying Conductor traveling with the show) for the current United States tour or Production. The number of local Musicians may be reduced by no more than 50% of the total required to accommodate for musicians traveling with the show. In the case of a Playing Conductor, that musician shall count as one (1) of the travelers. A Local 9-535 Musician shall be defined as one who has a permanent residence, or has regularly performed services within the jurisdictional boundaries of the Boston Musicians Association Local 9-535 for at least twelve months immediately preceding employment, subject to exception by Local 9-535 officers. In the event that no Local 9-535 member is available to play a specific part, the Employer shall be entitled to assign that part to a non-member.
- B. In the event that the Employer wishes to request relief from the requirements of this section, the Employer shall use best efforts to make said request no later than two (2) weeks prior to the first service. A request for relief from the staffing set forth in this ARTICLE IV must be heard by the President in consultation with the Theatre Committee of Local 9-535. The decision of the President and Theatre Committee shall be subject to the Grievance and Arbitration provisions of this Agreement. Local 9-535 shall respond no later than five business days from the time said request is received.
- C. There shall be no requirement to hire local Musicians for self-contained concerts and productions such as "SARAFINA" or "BUDDY" where Musicians are an integral part of the show.

Section 2. Virtual Orchestra Staffing

For a Musical presentation that regularly operates a "Sinfonia" or any other virtual orchestra machine during performances, the following staffing obligations shall apply

A. For non-Pamphlet B Musical Presentations, the Employer shall employ the

number of Local 9-535 Musicians required by the show (not to include non-playing Conductor traveling with the show) for the current United States tour or Production. The number of local Musicians may be reduced by no more than 50% of the total required to accommodate for musicians traveling with the show; but provided however, that in no event shall less than five (5) local musicians be employed.

B. For a Musical presentation traveling under an American Federations of Musicians (AFM) Pamphlet B Agreement (hereinafter, "Pamphlet B Musical Presentation"), not less than five (5) musicians, to include all traveling and local musicians (but not to include non-playing Conductor traveling with the show), shall be engaged for the presentation.

Section 3. "Pamphlet B" Staffing

There shall be no local minimum staffing obligation for Pamphlet B Musical Presentations.

ARTICLE V REGULAR PERFORMANCES

(See Addendum A for Basic Performance Rates)

Section 1. Length of Performance Call

Performances and Dress Rehearsals shall be three and one quarter (3½) hours measured from fifteen (15) minutes prior to advertised curtain time, include an intermission per Section 5 herein, and be subject to applicable overtime rates and conditions.

Section 2. Performance Overtime

The time periods set forth herein shall be measured from fifteen (15) minutes prior to advertised curtain time.

- a. Until midnight: 150% of the applicable wage rate measured in fifteen (15) minute segments.
- b. After midnight: 200% of the applicable wage rate measured in fifteen (15) minute segments.

Section 3. Midnight and Holidays

Performances on Christmas Eve and New Year's Eve shall pay time and one-half (150%) commencing at 5pm or later. Performances at midnight shall pay \$21.22 additional per Musician.

Section 4. Single Performance Rate

If a show opens in the middle of the week, Musicians shall be paid the single performance rate. However, the amounts paid under the single performance rate for less than eight (8) performances during anyone week, exclusive of overtime, shall not exceed the Musicians' weekly wage rate.

Section 5. Intermission

There shall be at least one fifteen (15) minute intermission during a performance or dress rehearsal. Any omission of the required intermission during a performance or dress rehearsal shall entitle each Musician engaged for that performance or dress rehearsal to an additional ten dollars (\$10.00) per omitted intermission. Should a performance of unusual length or execution be scheduled, the Employer may request a modification of this provision, which shall not be unreasonably denied. If there is no intermission but the Musicians can leave the pit (e.g. Chorus Line and Man of La Mancha), no additional compensation shall be paid.

ARTICLE VI PREMIUM PAYMENTS

Section 1. Principal Pay

The Employer shall provide a principal pay pool equal to forty percent (40%) of the thencurrent Musician wage to be allocated, at the discretion of the Union, among the Musicians who are engaged to play in the production.

Section 2. Midi Synthesizer Premium

A Musician engaged to play one (1) or two (2) electronic musical devices (including midi's, synthesizers, samplers, keyboards, modules or other connecting devices) or an acoustic keyboard in addition to one (1) electronic musical device shall be paid an additional twenty-five percent (25%) of the applicable basic wage. A Musician hired to play three (3) or more such instruments shall be paid an additional fifteen percent (15%).

Section 3. Instrument Maintenance for Harp

Harpists who provide their own instrument shall be paid an additional fifty dollars (\$50.00) per week.

Section 4. Doubling

Any Musician required to double shall receive the following percentages in addition to regular rates:

First double: Twenty percent (20%) additional Second double: Fifteen percent (15%) additional

Third & subsequent: Ten percent (10%) additional for each

Doubling percentages are based on minimum applicable rates and shall apply to all categories of musical services. Doubling percentages shall not exceed seventy-five percent (75%) additional compensation.

The following instrument combinations within the noted respective groups shall NOT be considered as doubles:

- 1. Piano and Celeste
- 2. Organ and Celeste;
- 3. Saxophone Family except Soprano, Baritone and Bass Saxophone;
- 4. A and Bb Soprano Clarinets;
- 5. Bb, C and D Trumpets;
- 6. Timpani;
- 7. Latin Instruments: Cabasa, Claves, Maracas, Guiro, Shakers, Congas, Bongos, Timbales, Quipada de Burro, Boobams, Tumba, etc.;
- 8. Drummer's outfit, consisting of bass drum, tom toms, snare drum, pedal cymbals (high hat), gongs, single chime, bells, piatti, woodblock, snare traps, cymbals and small traps (tambourine, triangle, wood block, bell tree, mark tree, cow bell, ratchet, sleigh bells, doorbell, temple blocks, whistle, ratchet, etc.).
- 9. Mallet Instruments: Including xylophone, vibraharp, marimba, chimes, soprano bells, glockenspiel, or any other diatonic set. The percussionist may play any three (3) of these mallet instruments. For each additional mallet instrument played after these three (3), a doubling fee will be paid.

If Musicians have been hired to double before the first rehearsal or first performance and the double(s) are canceled before the first rehearsal or first performance, the Musicians shall be reimbursed for any expenses incurred in the rental and/or transportation of instrument(s).

If doubling begins with a rehearsal and is subsequently canceled during the rehearsal period, Musicians must receive the appropriate doubling percentages for any services performed on the canceled double(s) plus any costs of rental and/or transportation of instruments.

After a show opens, one (1) week's notice shall be required for cancellation of a double or doubles. Musicians must receive the appropriate doubling percentage for this period and must be reimbursed for any costs of rental and/or transportation of instruments.

The Grievance Procedure will be resorted to in the event of a dispute.

Section 5. Instrument Cartage

The Employer agrees to continue in effect during the life of this Agreement the past practice of reimbursing Musicians for the costs of transporting instruments not reasonably capable of personal transport, including, without limitation, harp, timpani, mallet percussion, and large amplifiers.

Section 6. Playing On Stage or in Costume

Any Musician required to play outside the pit or in view of the audience shall receive ten percent (10%) per performance/week in addition to the applicable rates set forth herein. Any Musician required to play outside the pit and in costume shall receive a total of twenty percent (20%) per performance/week in addition to applicable rates. A "costume" shall be defined as anything other than a suit or tuxedo.

ARTICLE VII REHEARSAL CONDITIONS

(See Article IX for Pre-Broadway Production Work) (See Appendix A for Rates)

Section 1. Rehearsal Time Span

A first rehearsal may not begin earlier than 9:00AM, and shall be a three (3) hour minimum call. Regular rehearsals shall not exceed three (3) hours. If there is a one (1) hour break between a first and a second rehearsal, the second rehearsal call shall be for a minimum of two (2) hours. If more than a one (1) hour break occurs between two (2) rehearsals on the same day, the second rehearsal shall be for a minimum of three (3) hours. The regular rehearsal day shall end at 6:00PM.

It is understood by the parties that this and subsequent Sections in this ARTICLE permit a total of:

- 1. Nine (9) hours of rehearsal on a non-performance day (six (6) daytime and three (3) evening hours), or, a total of
- 2. Seven (7) hours of rehearsal on a performance day (six (6) hours of daytime and one (1) hour under a one (1) hour Call).

Section 2. Sound Check Rehearsals

A sixty (60) minute sound check rehearsal paid at one-third (1/3) of the applicable pro-rata performance rate, ninety (90) minute sound check rehearsal paid at one-half (1/2) of the applicable pro-rata performance rate or a two (2) hour sound check rehearsal paid at two-

thirds (²/₃) of the applicable pro-rata performance rate sound check rehearsal may be called before a performance. Such rehearsal must end no later than one-half (½) hour before the beginning of a performance. No services of any kind shall be required of Musicians during this half-hour prior to a performance.

Section 3. Talk-Over Rehearsals

A Talk-Over rehearsal is permitted either during the half hour immediately prior to a performance or immediately following the conclusion of a performance (until midnight), and shall pay the applicable pro-rata performance straight-time rate. A Talk-Over is not permitted prior to a performance if there has been a one (1) hour call prior to the same performance.

Section 4. Open/Dress Rehearsals

Open/Dress rehearsals shall not exceed three (3) hours (including a fifteen (15) minute break) and shall be counted as a performance or may be substituted for a performance. Dress rehearsals shall be three and one-half (3½) hours in the opening week, or in the opening preview week of a Break-In show. Any omission of an intermission at an open or dress rehearsal shall require payment to each Musician of an additional ten dollars (\$10.00) for each omission.

Section 5. One-hour Rehearsal Call

A one (1) hour rehearsal may be called before a performance, but only after a show has opened. Such rehearsal must end one-half ($\frac{1}{2}$) hour prior to a performance and will pay one-third ($\frac{1}{3}$) of the applicable performance rate.

Section 6. Rehearsals Extending Beyond 6PM

A rehearsal that extends beyond 6:00PM shall pay double the applicable rate. If a rehearsal extends beyond 7:00PM, the entire rehearsal shall pay the applicable performance rate.

Section 7. Evening Rehearsal Call

An evening rehearsal starting at 6:00PM or later shall not exceed three (3) hours and shall pay the applicable single performance rate.

Section 8. Daytime Rehearsal Overtime

Overtime for day rehearsals shall pay one hundred fifty percent (150%) of the hourly daytime rehearsal rate in one-half ($\frac{1}{2}$) hour increments.

Section 9. Overtime Beyond Midnight

Overtime beyond midnight shall pay two hundred percent (200%) of the regular rehearsal rate in one-half (½) hour increments.

Section 10. Rehearsals at Midnight

Rehearsals starting at midnight shall pay the applicable per hour performance overtime rate with a two (2) hour minimum call.

Section 11. Rest Periods

Five (5) minutes of each hour shall be allotted for a break. Any omission of a break shall entitle each Musician to an additional six dollars (\$6.00) for each omission.

Section 12. Single Rehearsal Pianist

A single rehearsal pianist shall be paid two dollars (\$2.00) per hour in addition to the regular rehearsal rate with a minimum three (3) hour call no later than midnight. After midnight the rate shall be seventeen dollars (\$17.00) per half-hour or less.

Section 13. Calling and Canceling

After a show has opened, reasonable notice must be given of any additional rehearsal(s) in order that Musicians may arrange their professional schedules. Except as provided for in Article XI. Cancellations, at least forty-eight (48) hours notice must be given to cancel a rehearsal.

ARTICLE VIII USE OF LIVE MUSIC

Section 1. No Music

A presentation using no music in any part of the theatre shall not be required to employ Musicians.

Section 2. Records and Tapes

Recorded music shall not displace Local 9-535 Musicians for Musicals.

Section 3. Disputes

Any dispute about the nature and extent of recorded music used or the number of Musicians to be employed may be grieved by either party, pursuant to ARTICLE XXVI, Grievance and Arbitration.

Section 4. Notification

The Employer shall give Local 9-535 reasonable notice in advance of the first performance of any production/presentation in which recorded or taped music is to be used.

ARTICLE IX PRE-BROADWAY PRODUCTION WORK

A Pre-Broadway Production shall consist of all work related to an attraction which is being mounted, rehearsed and originally performed where, at the time that such work commences on the attraction at the Theatre, the attraction has been scheduled for a sit-down engagement on Broadway and is one (1) of the first three (3) stops on a Pre-Broadway tour.

These terms shall be effective during any and all rehearsals, performances or other calls (including preview and press performances) from the inception of a Pre-Broadway Production through its closing performance at the Theatre.

Section 1. Rehearsals for Pre-Broadway Productions

- A. Scheduling When actors and Musicians are rehearsing together, all rehearsal hours and breaks for Musicians shall coincide with rehearsal hours and breaks for performers and actors as set forth in the applicable, current Agreement between Actors Equity Association and the League of American Theaters and Producers or any other applicable producer organization ("the Equity Agreement"). No other rehearsal breaks shall be required. To the extent consistent with the rehearsal hours and breaks set forth in the Equity Agreement, the Employer may determine, at its discretion, rehearsal schedules and shall have no restrictions concerning the number or timing of daily rehearsals.
- B. Notice The Employer shall give at least one (1) week notice of rehearsal schedules. The Employer shall give at least forty-eight (48) hours notice of rehearsal changes or cancellation. If less than forty-eight (48) hours notice of a rehearsal change is given, any Musician may send a substitute.
- C. Substitution for Performances Prior to the official opening, up to three (3) hour rehearsals may be substituted for scheduled performances at the performance rate.
- D. Overtime- All Rehearsal overtime hours shall be compensated at one and one half (1½) times the applicable hourly rate identified in Section 3 herein. Overtime hours shall be defined as all rehearsal hours in excess of eight (8) per day as well as any rehearsal hours after 7pm. Under no circumstances will overtime be paid on overtime, nor shall there be any other form of pyramiding or compounding of overtime.

Section 2. Performances for Pre-Broadway Productions

A. Previews through the Official Opening Night – Preview Performances during and up through the Official Opening night shall be based on a four (4) hour call, inclusive of the 15 minute call prior to curtain, no later than midnight. Overtime shall apply

thereafter.

- B. The Week Post-Opening Night After the Official opening night, the performance length for the remainder of the first week of the "Break-In" show shall be three and one half (3½) hours, measured from fifteen (15) minutes prior to advertised curtain time. Overtime shall apply thereafter.
- C. All Other Performances After the conclusion of the Official opening week, all performances shall be three and one quarter (31/4) hours measured from fifteen (15) minutes prior to advertised curtain time. Overtime shall apply thereafter.
- D. Performance Overtime Performance overtime shall be paid based on the wages in Section 3 herein utilizing the formulas in Article V, Section 2.

Section 3. Wages for Pre-Broadway Productions

- A. Rehearsal Wages All rehearsal wages for Musicians on a Pre-Broadway Production shall be eight-five percent (85%) of the basic wage scale as described in the Collective Bargaining Agreement.
- B. Performance Wages All performance wages for Musicians on a Pre-Broadway Production shall be eight-five (85%) of the basic wage scale as described in the Collective Bargaining Agreement for weeks one (1) through seven (7) of a Pre-Broadway Production. Week one (1) is defined as the first week of paid performances. Beginning with the eighth (8th) week of performances the full basic scale wages as described in the Collective Bargaining Agreement shall apply.
- C. Conductors Wages In the event that the Conductor is working under this Agreement, he shall be paid the Pre-Broadway Production performance rate plus an additional fifty percent (50%) until the production's first paid public performance.
- D. The Rehearsal Pianist shall be paid an hourly rate of eighty-five (85%) of the wages as described in the Collective Bargaining Agreement.

Section 4. Substitutions for Pre-Broadway Productions

Musicians may not utilize substitutes during the following periods:

- A. All pre-production activities (i.e. before first paid public performance)
- B. Rehearsals except as provided for in Section 1.B.
- C. Preview performances (limited to the first two (2) weeks of the run.)
- D. First week of regularly scheduled paid performances.

E. Press performances during the first month of regularly scheduled performances. Notice of press performances must be posted at least two (2) weeks in advance.

ARTICLE X CANCELLATIONS

Section 1. Force Majeure.

In the event that the Employer is unable to fulfill any of its obligations under this Agreement because of fire, flood, accident, failure of transportation, power failure, labor dispute, strike, lockout, riot, act of God, war, the public enemy, or for any other similar cause which could not reasonably have been anticipated or prevented by the Employer, the Employer shall notify any officer of the Union as soon as possible, in which event the Musicians shall not be entitled to any compensation for the time during which said services shall not, for such reasons, be rendered. Such notice shall, whenever feasible, be in writing. Should any of the foregoing conditions continue for a period of ten (10) days or more after such notice to the Union, either party may, in writing, terminate the Musicians' employment with the Employer, and the Employer will pay for all services rendered to date.

Section 2. Other

Musicians engaged for rehearsals or performances of presentations by the Employer shall be given not less than seven (7) days' notice of any cancellation not considered a cancellation due to Force Majeure. Where the Employer has provided such Musicians with at least seven (7) days' notice of cancellation, the Employer shall not be liable for payment of any nature. Where the Employer has not provided such Musicians with at least seven (7) days' notice of cancellation, the Employer shall be liable for payment of all rehearsals and performances scheduled within seven (7) days of the date a cancellation notice is given. In no event, however, shall the compensation due under this clause exceed the length of the original engagement. This clause is intended to cover canceled performances only, and does not apply to Musicians who are terminated with just cause due to an inability to play the part for which they were hired.

In the event a service is canceled due to weather conditions, the Employer shall provide a minimum of four (4) hours notice of cancellation to the Local Contractor. If such notice is not given, Musicians shall be compensated for that service.

ARTICLE XI ACCESS TO THEATRE

The Business Representatives (President, Vice-President, Sccretary-Treasurer) of Local 9-535 shall have access to the Theatre at reasonable times for visits of reasonable duration to

confer with Musicians or the Employer about matters concerning this Agreement. Such visits shall not interfere with or distract Musicians from their duties or responsibilities.

ARTICLE XII PAYROLL TAXES

The Employer shall withhold and pay the Employer's share of any and all Federal or State payroll taxes attributable to the employment of Musicians under the terms of this Agreement.

ARTICLE XIII CONTROL OF MUSICIANS

The Employer shall at all times have complete control of the services rendered by its Musicians under this Agreement. The inability of any Musician to perform any musical services for which s/he has been hired is subject to proven detention by sickness, accident, failure of public transportation, riot, strike, epidemic, act of God, or any other legitimate condition beyond the control of the Musician.

ARTICLE XIV MISC. UNION ISSUES

Section 1. Union Security

To the extent permitted by applicable law, all Musicians covered by this Agreement must be members in good standing of Local 9-535, American Federation of Musicians (AFM). However, if the employment provided for hereunder is subject to the Labor Management Relations Act of 1947, all Musicians who are members of Local 9-535 when their employment commences hereunder shall be continued in such employment only as long as they continue in such good standing. All other Musicians covered by this Agreement shall, on or before the thirtieth (30th) day following commencement of their employment, or the effective date of this Agreement, whichever is later, become and continue to be members in good standing of Local 9-535, AFM. The provisions of this paragraph shall be of no force or effect unless permitted by applicable law.

Section 2. Shop Steward

Whenever members of Local 9-535 are engaged as an orchestra under the terms of this Agreement, the Union shall designate from the members one (1) person who shall represent the orchestra as Shop Steward. The Shop Steward shall be authorized to bring issues to the attention of the Employer on behalf of individual Musicians or on behalf of the entire orchestra. The Shop Steward in no way will infringe upon the authority of the Local Contractor. The Union may change the designation of the Shop Steward from time to time upon due notice to the Employer.

Section 3. Work Ducs

The Union shall be permitted authorization for payroll deduction of Work Dues. The Employer agrees to withhold and submit to the Union the current work dues percentage of Musicians' total scale wages by the fifteenth (15th) day of the month following the month in which services were performed. This amount shall be transmitted by one (1) separate check made payable to "AFM Local 9-535."

Section 4. Pension

The Employer agrees to be bound by and accept the terms and conditions of the Agreement and Declaration of Trust creating the American Federation of Musicians-Employers' Pension Fund (AFM-EPF). The Employer further agrees to contribute on behalf of each Musician the applicable pension percentage all wages earned by each Musician performing musical services. This amount will be submitted to the Union by one (1) separate check, made payable to AFM-EPF by the fifteenth (15th) day of the month following the month during which musical services were performed.

The Employer shall contribute into the American Federation of Musicians'- Employers' Pension Fund an amount equal to ten percent (10%) of each Musician's gross pay on behalf of each Musician, which amount shall increase to eleven percent (11%) effective June 30, 2007.

Section 5. Pension and Dues Reporting

The appropriate forms for the submission of work dues and pension information will be supplied by the Union and must accompany the payments, although reasonable computer equivalents such as payroll reports will be accepted.

Section 6. American Federation of Musicians (AFM) Laws

To the extent permitted by applicable law, nothing in this Agreement shall be construed as to interfere with any duty owed by any Musician hereunder to the AFM and Local 9-535 pursuant to their existing Bylaws, rules, regulations and orders.

Section 7. Program Listing

Subject to space limitations and other circumstances outside the control of the Employer, each Musician regularly scheduled to perform during the run of an attraction shall be afforded credit in the show's program.

ARTICLE XV HARASSMENT

Arbitrary and undue harassment of any Musician by visiting conductors or contractors will be construed as a violation of the goodwill of this Agreement and may constitute grounds for refusal of services. In the event of a dispute arising under this Article, the parties to this Agreement will resort to the Grievance Procedure.

ARTICLE XVI RECORDINGS OF PERFORMANCES

Musical services performed under this Agreement may not be recorded, reproduced, or transmitted from the place of performance in any manner or by any means whatever in the absence of a specific written agreement between the Employer and the AFM permitting such recording, reproduction, or transmission.

ARTICLE XVII SERVICES OF MUSICIANS

Section 1. Regular Duties

Musicians shall not be required to perform any services apart from those of a Musician. Any Musician acting as a leader or conductor, whether playing alone or with other Musicians, shall receive one hundred fifty percent (150%) of applicable rates.

Section 2. Attendance of Stand-By Musicians

A Musician engaged under the live music performing provisions who is not required to play shall attend all rehearsals and performances with instrument(s) and be duly compensated. However, the Employer may, at his/her discretion, allow the Musician to leave the Theatre after the Musician has checked-in.

Section 3. Substitution of Musicians

In the Employer's sole discretion, which discretion shall not be unreasonably exercised, substitutions of Musicians may from time to time be authorized in order to accommodate a Musician's professional schedule. The Contractor shall be responsible for selecting, approving, and breaking-in such authorized substitutes, at no additional expense to Employer.

ARTICLE XVIII SANITARY CONDITIONS AND FACILITIES

Section 1. Washrooms

The Employer shall provide and maintain separate, adequate and sanitary male and female washrooms for the Musicians.

Section 2. Musicians' Room

Within a reasonable time after the execution of this Agreement, the Employer shall provide and maintain a Musicians' Room(s), with adequate coat racks, chairs and lockable locker space for the Musicians' instruments, instrument cases and clothing, and changing facilities, separate for men and women. Adequate tables for the assembling of instruments shall be provided within the Musicians' Room(s). There shall be a means of securing the area within which the Musicians' lockers and tables are maintained using the means reasonably determined by the Employer to be most feasible for this purpose. Nothing in this Agreement, however, may be construed to imply that the Employer assumes responsibility for the safekeeping of any of the Musicians' equipment or clothing except as provided in Article XXII, Instrument Insurance.

Section 3. Access to Orchestra Pit

The Employer shall provide two (2) means of safe and secure access and egress to the orchestra pit.

Section 4. Performance and Rehearsal Conditions

- A. The Employer shall provide and maintain chairs in the orchestra pit, which are without arms, straight- backed, and padded. If a rehearsal is held outside the pit, chairs of equivalent comfort to those in the pit shall, wherever possible, be provided.
- B. The Employer shall endeavor at all times to maintain adequate lighting, ventilation and a temperature between sixty-five (65) and eighty (80) degrees for performances and rehearsals. If the temperature exceeds these limits despite the best efforts of the Employer, temporary devices such as space heaters and fans shall be provided. If during a performance the temperature exceeds seventy-five (75) degrees, the Musicians shall be allowed to remove neckties and jackets.

Section 5. Parking

Should the Employer secure discounted parking near the theatre, such discounted parking shall be provided to Musicians working a performance.

ARTICLE XIX SELLING AND LEASING

Notwithstanding any of the provisions of this Agreement, it is expressly understood and agreed that if the Employer shall lease, sublet or in any other manner dispose of the control of the theatre for any periods of time to any other persons, firm or corporation for a policy other than Legitimate Theatre attractions, the Employer shall no longer be liable in any manner whatsoever for the performance of this Agreement, and they shall not be held responsible in any manner, either directly or indirectly for any of the acts or defaults of the person, firm or corporation who shall succeed to the operation of the Theatre. It is however

further agreed that the Employer shall give thirty (30) days prior notice to the party of the second part to whom contemplation of the Theatre is leased or otherwise disposed of. Notwithstanding any of the provisions of this Agreement, if the Employer shall for any reason lose control of the said Theatre, its responsibility thereafter shall thereupon cease.

ARTICLE XX GRAND OPERA, BALLET, AND STAR ATTRACTIONS

Unless signatory to a separate agreement with AFM Local 9-535, Opera and Ballet presented in the Boston Opera House shall be subject to the Wage Scales and conditions per WAGE SCALE III (Ballet and Opera) of Local 9-535.

If a touring opera or ballet company employs an orchestra (other than a resident or house orchestra) during any part of such tour, an orchestra comprised of Local 9-535 Musicians shall be engaged for each of such company's performances in the Theatre. If the company does not employ an orchestra (other than a resident or house orchestra) during any part of such tour, it may use tape-recorded music for the company's performances in the Theatre. In such event, Local 9-535 Musicians shall not be displaced, and three (3) Local 9-535 Musicians shall be engaged and paid for each performance.

Tape-recorded music may be used in conjunction with any performance of opera or ballet without penalty or premium hereunder if the nature of the performance requires such use.

If a star attraction is presented in the Boston Opera House and local Musicians are required by the show, such employment shall be subject to the Wage Scales and conditions per WAGE SCALE IX (Public Engagements with Paid Admissions, Star Attractions, Trade Shows, Night Clubs, etc) of Local 9-535.

ARTICLE XXI NO CLAIMS AGAINST EMPLOYER

The Employer represents that there are no existing claims of any kind against him as a result of musical services performed for him. No member of the Union shall be required to satisfy any provisions of this Agreement, or to render any services for the Employer if any such claim were unsatisfied or unpaid, in whole or in pan.

ARTICLE XXII INSTRUMENT INSURANCE

The Employer will indemnify the Musicians for any uninsured/uncovered loss or damage to their instruments while the instruments are located in the Theatre except when the uninsured/uncovered loss or damage to the instrument is caused by the negligence of the owner or a fellow member of the bargaining unit.

ARTICLE XXIII FUNERAL LEAVE

Musicians who are engaged for a production of more than four (4) weeks shall be entitled to one (1) day of Funeral Leave during each four (4) week period of the production. Funeral Leave may be used solely as a result of a death in the Musician's immediate family (parent, sibling, spouse equivalent or child). A Funeral Leave day shall be paid at the rate of seventy percent (70%) of the Musician's applicable pro rata base wage. Funeral Leave may not be accrued beyond the four (4) week period.

ARTICLE XXIV GRIEVANCE AND ARBITRATION

Section 1. Grievances

- A. A grievance, for purposes of this ARTICLE, shall be defined as a dispute between the Employer and the Union concerning the meaning or application of this Agreement, which is not already governed by a method of resolution specified elsewhere in this Agreement.
- B. Any Musician directly involved in a grievance shall seek to resolve such grievance informally through discussions with the day-to-day Manager. The Employer shall seek to resolve a grievance informally through discussions with the Union or any officer or business agent thereof capable of resolving such a grievance on the Musician's behalf.
- C. In the event that a grievance is not resolved informally as provided hereinabove, the Employer or the Union may process such a grievance as follows:

1. Step One

The grievance shall be submitted in writing by the Union to the Theatre Manager or by the Employer to the Union's Authorized Representative as soon as possible, but in no event later than ten (10) calendar days of the date the facts giving rise to the grievance occurred or could reasonably have been discovered. Such a written grievance shall be dated and signed and shall state the provisions of this Agreement involved in the grievance, an explanation of the grievance, and the remedy sought. The Theatre Manager or the Union's Authorized Representative shall respond to the grievance within five (5) calendar days. If the grievance is not then resolved to the satisfaction of the Employer or the Union within five (5) calendar days of its submission under Step One, either party may, within five (5) calendar days thereafter, submit the grievance to Step Two.

2. Step Two

A grievance submitted for review Under Step Two shall be submitted in writing to the Employer's designated chief representative or to the President or Board of Directors of the Union. Within five (5) calendar days of the timely submission of such a grievance, the Employer and the Union, through their respective representatives, shall meet to discuss the grievance. The Employer's designated chief representative or the President or Board of Directors of the Union shall, no later than five (5) calendar days following this meeting, respond to the grievance in writing.

3. Time Limits

The parties may, by mutual written agreement, modify any of the time limits set forth herein.

Section 2. Arbitration

Within ten (10) calendar days from the date on which the Step Two response is received or, due, whichever is earlier, the Union or the Employer may submit an unresolved grievance to the Boston office of the American Arbitration Association (MA) for resolution, in which event the AAA's Voluntary Labor Arbitration Rules shall apply. The administrative fees of the AAA and the fees of the arbitrator shall be borne equally by the parties. The decision of the arbitrator shall be final and binding upon the parties. However, in no event shall the arbitrator have the authority to add to, modify, or subtract from the terms and conditions specifically set forth in this Agreement.

The prescribed time limits for processing grievances shall be strictly enforced. If either the Employer or the Union fails to process a grievance to the next step within any of these time limits, the grievance shall be deemed to have been waived.

ARTICLE XXV STRIKES AND LOCKOUTS

During the term of this Agreement, neither the Union nor its agents, nor its members, nor any Musician covered by this Agreement will authorize, instigate, aid, condone or engage in a stoppage, sympathy strike, slowdown, any other type of strike or other interference with work, or respect any picket line, and the Employer will not institute any lockout of Musicians.

ARTICLE XXVI WORK RULES

The Union agrees that Musicians employed by the Employer shall abide by the terms and conditions of the Employer Work Rules established in Appendix B of this Agreement. Discipline involving the work rules shall be subject to grievance and arbitration procedures.

ARTICLE XXVII TERM OF THE AGREEMENT

The term of this Agreement shall be for three (3) years beginning January 1, 2014 and ending December 31, 2016.

Unless written notice is given by either party to the other at least sixty (60) days and not more than ninety (90) days prior to the date of termination of a desire for change therein or to terminate same, this Agreement shall continue in effect for an additional year and from year to year thereafter, subject to termination or modification at the expiration of any such contract year upon notice in writing given by either party to the other at least sixty (60) days and not more than ninety (90) days prior to the expiration of such contract year.

Notwithstanding the above, either party may terminate this Agreement on not less than sixty (60) days written notice.

ARTICLE XXVIII GOVERNING LAW

This Agreement and the rights and obligations of the parties contained herein shall be construed in accordance with and governed by the laws of the Commonwealth of Massachusetts.

BOHV Operations, LLG

James Jensen

Executive Director

539 Washington Street

Boston, MA 02111

617-259-3412

AMERICAN FEDERATION OF MUSICIANS Local 9-535

By:

Patrick Hollenbeck

President

130 Concord Avenue

Belmont, MA 02478

617-489-6400

APPENDIX A- WAGE RATES (see related conditions Articles VI, VIII)

REGULAR RATES	01/01/14- 12/31/14	01/01/15- 12/31/15	01/01/16- 12/31/16
Weekly Performance Rate	1563.59	1602.68	1650.76
Pro Rata Performance Rate	195.46	200.34	206.35
Single Performance Rate (pro rata +10%)	229.60	235.34	242.40
Daytime Rehearsal Rate	39.09	40.06	41.27
Pension	11.99%	11.99%	11.99%

PRE-BROADWAY PRODUCTION	01/01/14-	01/01/15-	01/01/16-
RATES (85% OF REGULAR RATE)	12/31/14	12/31/15	12/31/16
Weekly Performance Rate	1329.05	1362.28	1403.15
Pro Rata Performance Rate	166.14	170.29	175.40
Single Performance Rate (pro rata +10%)	195.16	200.04	206.04
Daytime Rehearsal Rate	33.22	34.05	35.07
Pension	11.99%	11.99%	11.99%

APPENDIX B CATEGORY 1 WORK RULES

The Opera House (hereinafter the "Employer") shall be deemed to have just cause to discharge any Musician for any violation of Category 1 Work Rule. The following list of Category 1 offenses justifying immediate discharge is not intended to limit an arbitrator from finding just cause for an immediate discharge resulting from other types of serious misconduct.

1.0 SUBSTANCE ABUSE

No Musician may use, sell, purchase transfer or possess any illegal or controlled drugs (unless prescribed by the Musician's physician) while on duty at or performing the business of the Opera House.

No Musician may be under the influence of alcohol or any illegal or controlled drugs while on duty or performing Opera House business. The use of legally prescribed medications is permitted only to the extent that the use of such medications does not adversely affect the ability of the Musician to perform job duties or the safety of the Musician or others.

1.1 HARASSMENT

No Musician shall engage in any form of unlawful harassment, including sexual, racial, religious, ethnic, sexual orientation or ethnic harassment, or harassment on the basis of any other protected classification. (Each Musician shall be obligated to abide by the complete sexual harassment policy as distributed by employer under the state and federal guidelines.)

1.2 THEFT OR WILLFUL DESTRUCTION OF PROPERTY

No Musician shall steal or willfully destroy any property on The Opera House's premises, including but not limited to Opera House property, or the property of its tenants, independent contractors, patrons, or other Opera House Employees. No Musician shall be dishonest in the performance of his job duties, time reporting and any representation made to the Opera House that concerns wages, hours or a term or condition of employment.

1.3 VIOLENCE

No Musician shall commit any act of violence while on duty at the Opera House.

No Musician shall commit any act of violence against any other Opera House Musician at any time.

1.4 GROSS INSUBORDINATION:

No Musician shall disregard the instructions of Employer, or in any other way commit an act of gross insubordination.

1.5 ABSENCE FROM A REHEARSAL CALL OR PERFORMANCE CALL:

No Musician who reports to work for a call (rehearsal, sound check or performance call) shall leave work prior to the end of the call without the express written permission of the Contractor, Conductor and Theatre Manager or his designee.

CATEGORY 2 WORK RULES

The Employer may take progressive disciplinary action against any Musician who violates a Category 2 work rule or who commits any other type of misconduct warranting progressive discipline.

A first offense shall result in an oral warning confirmed in writing.

A second offense shall result in a written warning and/or a three (3) day suspension without pay.

A third offense shall result in immediate termination.

2.1 UNAUTHORIZED ABSENCE:

Musicians shall be subject to discipline for all unauthorized absences. Musicians may not be absent without a valid reason and shall not be absent without providing advance notification and receiving authorization.

Musicians are required to be present at the Opera House and available to perform their work duties at all times during their scheduled work hours. Musicians are expected to be at their job site ready to work at the beginning of their assigned call. If a Musician is unable to report to work on time, he or she must notify the Contractor and Theatre Manager or his designee as soon as possible, but no later than forty-eight (48) hours prior to the start of the Musician's assigned call unless circumstances prevent such advance notification, in which case the Musician shall provide notification as soon as possible.

Musicians are expected to return from their lunch/dinner breaks and be available to resume work at the time scheduled by the Contractor or Theatre Manager.

2.2 MINOR INSUBORDINATION:—

Musicians are expected to cooperate with and comply with the instructions of the Employer of the Opera House. Musicians are expected to comply with the instructions of the Contractor and Conductor. In addition, Musicians are expected to

cooperate with other Opera House Employees in any way that may be reasonably necessary for the successful operation of shows, events and other functions falling under the jurisdiction of Musicians.

2.3 COURTESY TOWARD PATRONS, VISITING COMPANIES AND OPERA HOUSE EMPLOYEES:

Musicians are expected to be polite and courteous to members of the public, visiting companies and other employees while on duty at the Opera House.

2.4 SMOKING

Smoking is not permitted anywhere within the Opera House.

2.5 MUSICIAN JOB PERFORMANCE

Musicians shall perform the duties of their job diligently and competently.

2.6 FOOD AND BEVERAGES

There shall be no food or beverages (water excepted) permitted in the orchestra pit.



For Dates 06/01/2009 Through 12/31/2015

Date Printed: 01/12/2016

Employer(s): Wang Theatre, Inc.
 Member(s): ALL Members

EMPLOYER: Wang Theatre, Inc.

Name Ambroszewski, Michael	SS# XXX-XX-0152	Start Date 06/05/2011 01/27/2013 11/18/2013 11/18/2013 11/25/2013 11/25/2013 12/02/2013 12/01/2013 12/14/2014 12/22/2014	End Date 06/12/2011 02/03/2013 11/24/2013 11/24/2013 12/01/2013 12/01/2013 12/08/2013 12/08/2013 12/21/2014 12/28/2014
Barnes, Holly	XXX-XX-8762	Total: 06/05/2011 06/10/2012	10 06/12/2011 06/17/2012
		Total:	2
Batmunkh, Chinbat	XXX-XX-1426	10/29/2009	10/29/2009
		Total:	1
Bostian, Walter	XXX-XX-4892	11/18/2013 11/18/2013 11/25/2013 11/25/2013 12/02/2013 12/01/2013	11/24/2013 11/24/2013 12/01/2013 12/01/2013 12/08/2013 12/08/2013
		Total:	6
Powlby, Jr. Robert	XXX-XX-2460	06/25/2009 06/28/2009 11/12/2009 06/05/2011 11/18/2012 11/28/2012 12/09/2012 04/21/2013 11/18/2013 11/18/2013 11/25/2013	11/25/2012 12/02/2012 12/13/2012 04/28/2013 11/24/2013 11/24/2013
		04/21/2013 11/18/2013	04/28/2013 11/24/2013

For Dates 06/01/2009 Through 12/31/2015

Date Printed: 01/12/2016

Employer(s): Wang Theatre, Inc.
 Member(s): ALL Members

EMPLOYER: Wang Theatre, Inc.

Name	ss#	Start Date	End Date
Bowlby Gr. Robert (Con't)	XXX-XX-2460	11/25/2013 12/01/2013 12/02/2013 11/02/2014 11/09/2014 12/14/2014 12/22/2014	12/01/2013 12/08/2013 12/08/2013 11/09/2014 11/16/2014 12/21/2014 12/28/2014
		Total:	18
Boykan, Deborah	XXX-XX-6868	01/27/2013	02/03/2013
		Total:	1
Brooke, Lisa	XXX-XX-2548	06/10/2012 01/27/2013	06/17/2012 02/03/2013
		Total:	2
Buda, Fred	XXX-XX-9514	10/22/2009 11/08/2009 06/05/2011 06/10/2012 01/27/2013	10/22/2009 11/08/2009 06/12/2011 06/17/2012 02/03/2013
		Total:	5
Carrai, Susan	XXX-XX-7045	06/10/2012 01/27/2013	06/17/2012 02/03/2013
		Total:	2
Cash, Julia	XXX-XX-1084	02/10/2013 11/02/2014 11/09/2014	02/17/2013 11/09/2014 11/16/2014
		Total:	3
	XXX-XX-7679	06/05/2011 01/27/2013 11/18/2013 11/18/2013	06/12/2011 02/03/2013 11/24/2013 11/24/2013

For Dates 06/01/2009 Through 12/31/2015

Date Printed: 01/12/2016

Employer(s): Wang Theatre, Inc.
 Member(s): ALL Members

EMPLOYER: Wang Theatre, Inc.

Name	SS#	Start Date	End Date
Girellia, Peter (Con't)	XXX-XX-7679	11/25/2013 11/25/2013 12/01/2013 12/02/2013	12/01/2013 12/01/2013 12/08/2013 12/08/2013
		Total:	8
Cooker Benjaming	XXX-XX-0586	06/25/2009 06/28/2009 11/18/2012 11/28/2012 12/09/2012 01/27/2013 04/21/2013 11/18/2013 11/18/2013 11/25/2013 11/25/2013 12/01/2013 12/02/2014 11/09/2014	06/25/2009 06/28/2009 11/25/2012 12/02/2012 12/13/2012 02/03/2013 04/28/2013 11/24/2013 11/24/2013 12/01/2013 12/01/2013 12/08/2013 12/08/2013 11/09/2014 11/16/2014
		Total:	15
Cross, Abigail	XXX-XX-8843	06/25/2009 06/28/2009 06/10/2012	06/25/2009 06/28/2009 06/17/2012
		Total:	3
Curry, Michael	XXX-XX-7308	06/05/2011 06/10/2012 01/27/2013 04/21/2013 11/02/2014 11/09/2014	06/12/2011 06/17/2012 02/03/2013 04/28/2013 11/09/2014 11/16/2014
		Total:	6
Curtis, Robert	XXX-XX-7504	06/10/2012	06/17/2012

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Date Printed: 01/12/2016

Employer(s): Wang Theatre, Inc.
Member(s): ALL Members

EMPLOYER: Wang Theatre, Inc.

Name	SS#	Start Date	End Date
·		Total:	1
D'Amico, Anthony	XXX-XX-4887		
•		Total:	1
Damian, Jon	XXX-XX-0784	02/03/2013	02/10/2013
		Total:	1
Ferland, Roderick	XXX-XX-4810	11/02/2014 11/09/2014 12/14/2014 12/22/2014	11/16/2014 12/21/2014
		Total:	4
Ferrante, Tom	XXX-XX-3184	06/25/2009 06/28/2009 10/22/2009	
		Total:	3
Flanagan, Richard	XXX-XX-7877	01/27/2013	02/03/2013
		Total:	1
Galindo, Jeffrey	XXX-XX-3417	10/22/2009	10/22/2009
		Total:	1
Gertz, Bruce	XXX-XX-8853	06/18/2009 07/12/2009	
		Total:	2
Given, Richard	XXX-XX-4111	01/27/2013 04/21/2013	
		Total:	2

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Date Printed: 01/12/2016

Employer(s): Wang Theatre, Inc.
Member(s): ALL Members

EMPLOYER: Wang Theatre, Inc.

Name	SS#	Start Date	End Date
Govoni, Dino	XXX-XX-4783	07/12/2009	07/12/2009
		Total:	1
Gunn, Stuart	XXX-XX-0309	10/28/2012	11/04/2012
		Total:	1
Wagen, Jedi	XXX-XX-9352	06/25/2009 06/28/2009 06/05/2011 06/10/2012 01/27/2013 04/21/2013	06/12/2011 06/17/2012 02/03/2013
		Total:	6
Haig, Jean	XXX-XX-7166	06/10/2012 01/27/2013	
		Total:	2
Hammett, Richard	XXX-XX-1399	10/22/2009	10/22/2009
		Total:	1
Hanly, Peter	XXX-XX-2681	06/05/2011 06/10/2012 01/27/2013	
		Total:	3
Haroutunian, Ronald	XXX-XX-2845	01/27/2013	02/03/2013
		Total:	1
Hatfield, Bradley	XXX-XX-3510	06/18/2009 07/12/2009	06/18/2009 07/12/2009
		Total:	2
Hennessy, Lisa	XXX-XX-1884	06/05/2011	06/12/2011

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Employer(s): Wang Theatre, Inc.
 Member(s): ALL Members

EMPLOYER: Wang Theatre, Inc.

Name	SS#	Start Date	End Date
Hennessy, Lisa (Con't)	XXX-XX-1884	01/27/2013	02/03/2013
		Total:	2
Hall, Ross	XXX-XX-6663	06/25/2009 06/28/2009 10/28/2012 11/18/2012 11/28/2012 12/09/2012 04/21/2013 12/14/2014 12/22/2014	06/25/2009 06/28/2009 11/04/2012 11/25/2012 12/02/2012 12/13/2012 04/28/2013 12/21/2014 12/28/2014
		Total:	9
Holt, Gregory	XXX-XX-3104	06/01/2009	06/30/2009
		Total:	1
Hoyer, Jeff	XXX-XX-6107	06/25/2009 06/28/2009	06/25/2009 06/28/2009
		Total:	2
Jerome, Donna	XXX-XX-0248	06/05/2011	06/12/2011
		Total:	1
Johnson, Scott A.	XXX-XX-2111	06/25/2009 06/28/2009 10/28/2012	06/25/2009 06/28/2009 11/04/2012
		Total:	3
Kennika kata baga.	XXX-XX-1476	07/12/2009 06/05/2011 01/27/2013 11/02/2014 11/09/2014	07/12/2009 06/12/2011 02/03/2013 11/09/2014 11/16/2014

For Dates 06/01/2009 Through 12/31/2015

Date Printed: 01/12/2016

Employer(s): Wang Theatre, Inc.
 Member(s): ALL Members

EMPLOYER: Wang Theatre, Inc.

Name	SS#	Start Date	End Date
		Total:	5
Kelly, Tim	XXX-XX-7285	10/22/2009	10/22/2009
		Total:	1
Kessler, Jolene	XXX-XX-6207	06/05/2011 06/10/2012 01/27/2013	06/12/2011 06/17/2012 02/03/2013
		Total:	3
Kim, Eugene	XXX-XX-1793	06/10/2012 01/27/2013	06/17/2012 02/03/2013
		Total:	2
Krishnaswami, Don	XXX-XX-3213	06/05/2011 06/10/2012 01/27/2013	06/12/2011 06/17/2012 02/03/2013
		Total:	3'
LaFitte, Barbara	XXX-XX-6062	01/27/2013 04/21/2013	02/03/2013 04/28/2013
		Total:	2
Larson, Sonja	XXX-XX-8510	06/05/2011 06/10/2012 01/27/2013	06/12/2011 06/17/2012 02/03/2013
		Total:	3
Lattini, James	XXX-XX-2162	07/12/2009	07/12/2009
		Total:	1
Lederer, Lisa	XXX-XX-5673	01/27/2013	02/03/2013

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Date Printed: 01/12/2016

Employer(s): Wang Theatre, Inc.
Member(s): ALL Members

EMPLOYER: Wang Theatre, Inc.

Name	SS#	Start Date	End Date
		Total:	1
Leeth, Arthur	XXX-XX-7367	06/10/2012	06/17/2012
		Total:	1
Lewis Jr, Charles	XXX-XX-7530	10/28/2012 12/14/2014 12/22/2014	11/04/2012 12/21/2014 12/28/2014
		Total:	3
Lippincott, Douglas	XXX-XX-7192	10/22/2009 06/05/2011	10/22/2009 06/12/2011
		Total:	2
Lynam, Robert	XXX-XX-7758	06/05/2011 06/10/2012	06/12/2011 06/17/2012
		Total:	2
Lyon-Pingree, Kathleen	XXX-XX-2895	01/27/2013 11/18/2013 11/18/2013 11/25/2013 11/25/2013 12/01/2013 12/02/2013	02/03/2013 11/24/2013 11/24/2013 12/01/2013 12/01/2013 12/08/2013 12/08/2013
		Total:	7
MacDowell, Paul	XXX-XX-8961	06/10/2012 01/27/2013	06/17/2012 02/03/2013
		Total:	2
Marlatt, Robert	XXX-XX-6330	06/05/2011 01/27/2013 04/21/2013	06/12/2011 02/03/2013 04/28/2013

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Date Printed: 01/12/2016

Employer(s): Wang Theatre, Inc.
Member(s): ALL Members

EMPLOYER: Wang Theatre, Inc.

Name	SS#	Start Date	End Date
		Total:	3
Martins, David	XXX-XX-8582	01/27/2013	02/03/2013
		Total:	1
Martins, Ellen	XXX-XX-5974	02/03/2013	02/10/2013
		Total:	1
McGinnis, Tracy	XXX-XX-6503	11/25/2013 11/25/2013 12/02/2013 12/01/2013	12/01/2013 12/01/2013 12/08/2013 12/08/2013
		Total:	4
McGowan, Margo	XXX-XX-8099	01/27/2013	02/03/2013
		Total:	1
Melley Neal	XXX-XX-3094	04/21/2013 11/18/2013 11/18/2013 11/25/2013 11/25/2013 12/02/2013 12/01/2013 12/14/2014 12/22/2014	04/28/2013 11/24/2013 11/24/2013 12/01/2013 12/01/2013 12/08/2013 12/08/2013 12/21/2014 12/28/2014
		Total:	9
Milch, Iva	XXX-XX-5383	01/27/2013	02/03/2013
		Total:	1
Monaghan, Michael	XXX-XX-5761	10/22/2009 10/28/2012	10/22/2009 11/04/2012

For Dates 06/01/2009 Through 12/31/2015

Date Printed: 01/12/2016

Employer(s): Wang Theatre, Inc.
 Member(s): ALL Members

EMPLOYER: Wang Theatre, Inc.

Name	SS#	Start Date	End Date
		Total:	2
Mordis, Gerald	XXX-XX-5974	06/05/2011 06/10/2012	06/12/2011 06/17/2012
		Total:	2
Newton, Gregory	XXX-XX-4778	10/28/2012 11/18/2012 11/28/2012 12/09/2012 01/27/2013 11/18/2013 11/18/2013 11/25/2013 11/25/2013 12/02/2013 12/01/2013	11/04/2012 11/25/2012 12/02/2012 12/13/2012 02/03/2013 11/24/2013 11/24/2013 12/01/2013 12/01/2013 12/08/2013 12/08/2013
		Total:	11
Oakes, Paula	XXX-XX-6693	06/05/2011 06/10/2012	06/12/2011 06/17/2012
		01/27/2013	02/03/2013
		01/27/2013 Total:	02/03/2013
Oberholtzer, Christopher	XXX-XX-9852		•
Oberholtzer, Christopher	XXX-XX-9852	Total:	3
Oberholtzer, Christopher Patton, Theresa	XXX-XX-9852 XXX-XX-0375	Total: 10/28/2012	3 11/04/2012
		Total: 10/28/2012 Total:	3 11/04/2012 1
		Total: 10/28/2012 Total: 04/21/2013	3 11/04/2012 1 04/28/2013

For Dates 06/01/2009 Through 12/31/2015

Date Printed: 01/12/2016

Employer(s): Wang Theatre, Inc.
 Member(s): ALL Members

EMPLOYER: Wang Theatre, Inc.

Name	SS#	Start Date	End Date
Perez-Espejo Cardenas, Miguel	XXX-XX-4269	06/10/2012	06/17/2012
		Total:	1
ETTES Watk	XXX-XX-0915	06/25/2009 06/28/2009 10/22/2009 06/05/2011 04/21/2013 11/18/2013 11/25/2013 11/25/2013 12/02/2013 12/01/2013 11/02/2014 11/09/2014 12/14/2014 12/22/2014	06/25/2009 06/28/2009 10/22/2009 06/12/2011 04/28/2013 11/24/2013 12/01/2013 12/01/2013 12/08/2013 12/08/2013 11/09/2014 11/16/2014 12/21/2014 12/28/2014
		Total: 15	
Plummer, Rebecca	XXX-XX-4077	12/14/2014 12/22/2014	12/21/2014 12/28/2014
		Total:	2
Pope, Kenneth	XXX-XX-3030	12/14/2014 12/22/2014	12/21/2014 12/28/2014
		Total:	2
Price-Glynn, Cynthia	XXX-XX-5851	06/10/2012	06/17/2012
		Total:	
	XXX-XX-7534	06/25/2009 06/28/2009 10/22/2009 11/12/2009 06/05/2011 11/18/2012	06/25/2009 06/28/2009 10/22/2009 11/12/2009 06/12/2011 11/25/2012

For Dates 06/01/2009 Through 12/31/2015

Date Printed: 01/12/2016

Employer(s): Wang Theatre, Inc.
Member(s): ALL Members

EMPLOYER: Wang Theatre, Inc.

Name	SS#	Start Date	End Date
Parent (Copy to)	XXX-XX-7534	11/28/2012 12/09/2012 04/21/2013 11/18/2013 11/18/2013 11/25/2013 11/25/2013 12/02/2013 12/01/2013 11/02/2014 11/09/2014 12/14/2014 12/14/2014	12/02/2012 12/13/2012 04/28/2013 11/24/2013 11/24/2013 12/01/2013 12/01/2013 12/08/2013 12/08/2013 11/09/2014 11/16/2014 12/21/2014 12/28/2014
		Total:	19
Rankin, Donald	XXX-XX-8642	06/10/2012 01/27/2013	06/17/2012 02/03/2013
		Total:	2
Richards, Martin	XXX-XX-2768	06/18/2009 07/12/2009	06/18/2009 07/12/2009
		Total:	2
Rimoni, Dani	XXX-XX-1217	06/10/2012 01/27/2013	06/17/2012 02/03/2013
		Total:	2
Rivard Michael	XXX-XX-3287	06/25/2009 06/28/2009 11/18/2012 11/28/2012 12/09/2012 01/27/2013 11/18/2013 11/18/2013 11/25/2013 11/25/2013 12/02/2013	06/25/2009 06/28/2009 11/25/2012 12/02/2012 12/13/2012 02/03/2013 11/24/2013 11/24/2013 12/01/2013 12/01/2013 12/08/2013

For Dates 06/01/2009 Through 12/31/2015

Date Printed: 01/12/2016

Employer(s): Wang Theatre, Inc.
Member(s): ALL Members

EMPLOYER: Wang Theatre, Inc.

Name	ss#	Start Date	End Date
#Rivard, Michael (Con!t)	XXX-XX-3287	12/01/2013 12/14/2014 12/22/2014	
		Total:	14
Rounds, William	XXX-XX-4227	06/10/2012 01/27/2013	06/17/2012 02/03/2013
		Total:	2
Severson, Kristen	XXX-XX-5236	01/27/2013	02/03/2013
		Total:	1
Simcox, Mark	XXX-XX-6253	06/10/2012	06/17/2012
		Total:	1
Smith, Barry J	XXX-XX-7991	06/18/2009	06/18/2009
		Total:	1
Smith, Nancy	XXX-XX-5497	01/27/2013	02/03/2013
		Total:	1
Stepton, Richard	XXX-XX-4529	10/22/2009 11/12/2009 06/05/2011	10/22/2009 11/12/2009 06/12/2011
		Total:	3
Story, Pattison	XXX-XX-2314	06/05/2011	06/12/2011
		Total:	1
Strauss, Rebecca	XXX-XX-9557	06/10/2012 01/27/2013	06/17/2012 02/03/2013
		Total:	2

For Dates 06/01/2009 Through 12/31/2015

Date Printed: 01/12/2016

Employer(s): Wang Theatre, Inc.
 Member(s): ALL Members

EMPLOYER: Wang Theatre, Inc.

Name	SS#	Start Date	End Date
Subero, Angel A	XXX-XX-6878	02/03/2013	02/10/2013
		Total:	1
Taranto, Maureen	XXX-XX-5958	06/05/2011 06/10/2012 01/27/2013	06/12/2011 06/17/2012 02/03/2013
		Total:	3
Taylor, Chris	XXX-XX-5954	06/18/2009	06/18/2009
		Total:	1
Tebce, Dana	XXX-XX-5049	10/28/2012 11/18/2012 11/28/2012 12/09/2012 11/02/2014 11/09/2014 12/14/2014 12/22/2014	11/04/2012 11/25/2012 12/02/2012 12/13/2012 11/09/2014 11/16/2014 12/21/2014 12/28/2014
		Total:	8
Tsai, Hsin-Lin	XXX-XX-9581	06/10/2012 02/10/2013	06/17/2012 02/17/2013
		Total:	2
Vint, Bill	XXX-XX-1993	10/22/2009 11/12/2009 12/14/2014 12/22/2014	10/22/2009 11/12/2009 12/21/2014 12/28/2014
		Total:	4
White Hope, Sonya	XXX-XX-1085	06/10/2012	06/17/2012
		Total:	1
Zay, Anastasia	XXX-XX-2381	06/10/2012	06/17/2012

For Dates 06/01/2009 Through 12/31/2015

Date Printed: 01/12/2016

Employer(s): Wang Theatre, Inc.
 Member(s): ALL Members

EMPLOYER: Wang Theatre, Inc.

Name	SS#	Start Date	End Date
		Total:	1
Zay, Peter	XXX-XX-0764	06/10/2012	06/17/2012
		Total:	1
Zigler, Randall	XXX-XX-2305	01/27/2013	02/03/2013
		Total:	1

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